

Edited by
Gerhard Jaritz
Torstein Jørgensen
Kirsi Salonen

... et usque ad ultimum terrae
The Apostolic Penitentiary
in Local Contexts



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THE APOSTOLIC PENITENTIARY IN LOCAL CONTEXTS

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INTRODUCTION

The Apostolic Penitentiary and its role in, and for, late medieval society may be seen as one of the best examples of how specific local needs of clerics and laity of all social origins, and global authority, in this case the pope, was connected and interdependent. For a variety of reasons, individual Christians requested grace from the Papal Curia, the Penitentiary in particular, which could not be given by others, neither by representatives of secular authority nor by any other members of the Church hierarchy. The central authority of the papacy determined and influenced not only matters of faith, but also the life of any late medieval Christian – to judge, punish, and absolve.

The present volume is a continuation of the international studies of the late medieval registers of the Apostolic Penitentiary. In particular, it may be seen as a cooperative initiative of researchers from the Centre of Medieval Studies at the University of Bergen, the Department of Medieval Studies at Central European University (Budapest), and the Department of History of the University of Tampere.¹ In the course of this initiative, a workshop entitled “The Apostolic Penitentiary in Local Contexts” was organised in June, 2005, at the Hungarian Academy in Rome. This book is one of the outcomes of this meeting. It aims at investigating the fifteenth-century registers of supplications to the Apostolic Penitentiary, and analysing examples out of the multiplicity of issues in which this context of local needs and universal power occurred.

Most of the following articles concentrate on aspects of “global” and “local” interaction with regard to the institutions and archives offering information about the individual cases and their handling. This can be seen in the case for Upper Italy in the contribution by Paolo Ostinelli, who highlights cases from this region and addresses their occurrence in the Penitentiary registers as well as in the source evidence found in local archives. Torstein Jørgensen shows the intensive connection of the global Church authority and local issues on the basis of a model of centre and periphery that he applies

¹ For previous results of this cooperation, see *The Long Arm of Papal Authority. Late Medieval Christian Peripheries and Their Communication with the Holy See*, ed. Gerhard Jaritz, Torstein Jørgensen and Kirsi Salonen, 2nd ed. (Budapest: CEU Press, 2005).

to Scandinavian cases. He demonstrates that ecclesiastical law codes touching the lives of individuals also reached the peripheral and northernmost province of the Roman church, that is, the archdiocese of Nidaros (= Trondheim), which included Norway, Iceland and North Atlantic islands.

The global and local contexts that the registers of the Penitentiary point to are approached particularly with reference to three areas: 'marriage and sexual conduct', 'vagrants and apostates', and problems that the church policy was confronted with in certain territories. In all of them a variety of interconnections and dependencies can be shown.

Jennifer McDonald studies illegitimate Scots who were seeking assistance from the Papal Curia during the pontificate of Pope Sixtus IV. She demonstrates a number of varieties concerning their treatment in the respective different register series preserved in the Vatican Archives and connects them with the social origin of the petitioners. Kirsi Salonen offers a case study about a particular case of marriage litigation in the Consistorial Court of the diocese of Freising. She demonstrates to what extent the information that local source material offers about an individual case may add to the surviving records in the Penitentiary registers. Meanwhile, Ana Marinković analyses the references to papal dispensations in the notarial registers of matrimonial contracts which survive in the archives of Dubrovnik. The matrimonial dispensations and their reference to impotence is the topic of Ludwig Schmugge's contribution. Concentrating on an Italian and a German case, he compares the appearance of impotence in canon law with its occurrence in the registers of the Penitentiary.

The articles of Gerhard Jaritz and Milena Svec Goetschi concentrate on the supplications from vagrant monks and apostates in the Penitentiary registers. Gerhard Jaritz addresses the source evidence from the dioceses of Salzburg and Passau. He compares the quality and quantity of the discourse about vagrants in the Penitentiary registers with the sources of the Orders and evidence originating from individual monastic houses. Milena Svec Goetschi, on the other hand, studies the supplications of a Premonstratensian canon who had escaped from his monastery in the diocese of Constance and joined mercenary troops.

'Local needs in threatened lands' and their contexts within the evidence contained in the registers of the Apostolic Penitentiary are analysed by two contributions concerning Central Europe. Etleva Lala deals with the variety of problems that the Catholic Church in Albania was confronted with during the period of direct contact with the Ottomans in the second half of the fifteenth century. She illustrates that the records from the Penitentiary demonstrate to some extent the conditions under which the Catholic religion survived in Albania during the first years of the Turkish occupation, and how the clergy of the region was supported by the Holy See. Antonín Kalous treats the situation in the Czech lands during the post-Hussite period of the reign of

King George of Poděbrady and the revolt against him. There, an alternative opened up, particularly for the nobles and the royal towns: either to stay faithful to the lawful king, or reject him and be faithful to the pope and the Roman Church, which directly opposed the king. Analysing the case of the town of Olomouc, the author questions to what extent the decisions of the Penitentiary were coordinated with the official papal policy of the fight against the heretic Hussites.

Altogether, the contributions in this volume illustrate that local and individual factors, as well as the practice of Christian faith and religion, must not be seen as separated from the universal and central authority of the Holy See. The latter's influence could become directly important for any individuals in any local space, and also ... *usque ad ultimum terrae* (Acts 1:8), on the utmost peripheries of the Christian world. The assistance by the Apostolic Penitentiary was indispensable in a variety of cases.

The editors would like to thank a number of institutions for their support offered for the workshop and the publication of this volume; in particular, the Hungarian Academy at Rome for their hospitality in offering the possibility to organise the meeting in the Palazzo Falconieri. Moreover, we are grateful to the Centre of Medieval Studies at the University of Bergen, the Department of Medieval Studies of Central European University and the Department of History at the University of Tampere for their interest in our research and cooperation. We are also especially grateful to the Apostolic Penitentiary at the Holy See and the Major Penitentiary, His Eminence, James Francis Cardinal Stafford, who showed his interest in our research by attending the workshop. His positive and very encouraging remarks have not only confirmed to us the importance of our studies, and the necessity to continue research, but also to do this with great joy.

Gerhard Jaritz, Torstein Jørgensen and Kirsi Salonen

May 2007

LOCAL NEEDS IN GLOBAL CONTEXTS



PENITENTIARY EVIDENCE AND LOCAL ARCHIVE MATERIAL: THE CASE OF UPPER ITALY (1438–1484)

Paolo Ostinelli

The records of the Apostolic Penitentiary preserved in the supplication volumes at the Vatican Archives reflect only a single moment of a longer process of supplication and therefore they must be considered as an incomplete source for the study of this particular form of contact between the *partes* and the central administration of the late medieval church. Since it was not necessary that the petitioners be present in person at the Roman curia, most of the requests had to be brought by other persons from their dioceses to the administrative centre of occidental Christendom, and in many cases the issuing of a letter by the Roman office did not yet mean that the corresponding grant was effective. The material of the Vatican Archives must be supplemented with local documents to reveal the antecedents, the procedural development, the reasons, and the effects of the single requests.

The following observations refer to the petitions sent from northern Italy, particularly from the bishoprics in the Milanese duchy, in the period between 1438 and 1484.¹ For this span of time we can use the registers of the Penitentiary and of a reasonably great number of local sources directly concerning the supplicants and their requests to the curial office. The aim of this contribution is to compare these different types of documents. The first part will illustrate the nature of the local material and will be fol-

¹ The definition of the boundaries of the Milanese duchy for this article considers the political situation of about 1450 to 1460, including therefore the dioceses of Alessandria, Bobbio, Como, Cremona, Lodi, Luni and Sarzana, Milan, Novara, Parma, Pavia, Piacenza, and Tortona: see Gianluca Battioni, “Censimento ed edizione di documenti pontifici relativi alla provvista beneficiaria delle diocesi padane,” *Schifanoia. Notizie dell'Istituto di studi rinascimentali di Ferrara* 4 (1987), 151–164, and the introduction to the volume of Michele Ansani (ed.), *Camera apostolica, I: Documenti relativi alle diocesi del ducato di Milano: i «libri annatarum» di Pio II e Paolo II (1458–1471)*, *Materiali di storia ecclesiastica lombarda, secoli XIV–XVI*, 1 (Milan: Edizioni Unicopli, 1994). On the Milanese state and its dioceses in this period see Giancarlo Andenna, Renato Bordone, Francesco Somaini, Massimo Vallerani (ed.), *Comuni e signorie nell'Italia settentrionale: la Lombardia* (Turin: UTET, 1998); Livio Antonielli and Giorgio Chittolini (ed.), *Storia della Lombardia, 1: Dalle origini al Seicento* (Rome-Bari: Laterza, 2003); Adriano Caprioli, Antonio Rimoldi, Luciano Vaccaro (ed.), *Storia religiosa della Lombardia*, 12 vols. (Brescia: La Scuola, 1986–1998).

lowed by an analysis of both the Roman and the local records from the perspective of their heuristic and diplomatic value. Through the observation of the mass of requests and their procedural development, it will be outlined how the local documents can be helpful in defining the role of the diocesan bureaucracy in putting people from the different dioceses in contact with the central Roman administration.

LOCAL ARCHIVAL SOURCES RELATED TO THE PENITENTIARY SUPPLICATIONS

A large variety of documents relating to the Penitentiary supplications can be found in the diocesan and other ecclesiastical archives, notarial archives and some private archives of Lombardy. These documents can be divided into two main groups: the first includes the Penitentiary documents preserved in the local archives, the second contains the acts concerning the requests which were produced *in partibus*.

As for the first group, the researcher can essentially expect to find four kinds of issues:

- The original letters sent in the name of the Major Penitentiary to the supplicants (when the grant was given *in forma gratiosa*) or to the commissioners (when given *in forma commissoria*).² The chance of finding such documents in Lombard archives is rather small; a systematic research for the diocese of Como brought to light only two original letters against 630 entries in the Penitentiary registers.³ For the other dioceses likewise it cannot be expected to discover more than a small number of isolated pieces.
- In particular cases the Penitentiary also accorded some kinds of grants handing over to the supplicants their original supplications after the approval *per sola signatura*.⁴ The fact that this kind of document only survived exceptionally after the death of the petitioners can be confirmed by the completely unsuccessful preliminary surveys in the public archives of the twelve dioceses in the Milanese state.

² Ludwig Schmugge, "Penitentiary Documents from Outside the Penitentiary," in *The Long Arm of Papal Authority: Late Medieval Christian Peripheries and Their Communication with the Holy See*, ed. Gerhard Jaritz, Torstein Jørgensen, and Kirsi Salonen, Medium Aevum Quotidianum, Sonderband XIV – CEU Medievalia 8 (Bergen-Budapest-Krems: CEU Press, 2004), 165-167 (henceforth: Schmugge, "Penitentiary Documents") (also referring to precedent publications); Milena Svec, "Apostasie und Transitus in der Registerüberlieferung und *in partibus*," in *The Roman Curia, the Apostolic Penitentiary and the Partes in the Later Middle Ages*, ed. Kirsi Salonen and Christian Krötzel, Acta Instituti Romani Finlandiae 28 (Rome: Institutum Romanum Finlandiae, 2003), 194-196.

³ Archivio Capitolare Laurenziano di Chiavenna, *Pergamene*, Nr. 784 (13 February 1454); Archivio di Stato di Como, *Ex-Museo*, fasc. 3, nr. 108. (2 March 1481).

⁴ Kirsi Salonen, *The Penitentiary as a Well of Grace in the Late Middle Ages. The Example of the Province of Uppsala 1448–1527*, Annales Academiae Scientiarum Fennicae 313 (Saarijärvi: Academia Scientiarum Fennica, 2001), 94 (henceforth: Salonen, *Penitentiary*).

- Some cases of petitioners willing to confess in Rome (whose number cannot be argued from the available sources) were handled directly in the major basilicas by the *penitentiarii minores*, who issued the so-called *litterae ecclesiae* to witness the oral confession and absolution. Similar to the original supplications, these acts are very rare in local archives because the corresponding absolutions or dispensations were effective without any further intervention of church authorities at the diocesan level and therefore only a minority ended up in non-family archival collections.⁵
- Although they preserve only a small number of original acts (a peculiarity which seems common to most European regions), the archives of northern Italy are quite rich in Penitentiary documents. Local records contain, in fact, a large number of copies of the letters sent from the curial office *in forma commissoria*. Since the commissioners (that is, the ordinary bishops, the vicar generals, the most important clergymen in the dioceses, but also other clerics as, for instance, the *plebani* or parish priests) ordered public notaries to transcribe the letters each time they were shown to them by the petitioners or by their procurators, the notarial sources are of great interest for the study of a large number of individual cases.⁶ For the dioceses of Milan and Como, for instance, we find the text of the corresponding letters for at least 10% of the entries in the Roman registers – that means more than 160 letters against 1600 registered supplications.⁷

The second main group of documents refers directly to the parts of the supplication process which took place outside the Penitentiary.

⁵ Schmutge, “Penitentiary Documents,” 164; Salonen, *Penitentiary*, 94.

⁶ The importance of notarial records for the study of the penitentiary documents is pointed out (for the 13th century) by Andreas Meyer, “Quellen zur Geschichte der päpstlichen Pönitentie aus Luccheser Imbreviaturen des 13. Jahrhunderts,” in *Päpste, Pilger, Pönitentie. Festschrift für Ludwig Schmutge zum 65. Geburtstag*, ed. A. Meyer, C. Rendtel, and M. Wittmer-Butsch (Tübingen: Niemeyer, 2004), 317–351 (henceforth: Meyer, “Quellen”); see also Gene Brucker, “Religious Sensibilities in Early Modern Europe: Examples from the Records of the Holy Penitentiary,” *Historical Reflexions* 15 (1988), 13–25, esp. 16; Barbara Mariani, “L’attività della curia arcivescovile milanese e l’amministrazione diocesana attraverso l’operato del vicario generale Romano Barni (1474–1477),” *Società e storia* 54 (1991), 769–811, esp. 808; Cristina Belloni, *Francesco della Croce. Contributo alla storia della Chiesa ambrosiana nel Quattrocento*, Archivio Ambrosiano LXXI (Milano: NED, 1995), 102. On the transcription of the Penitentiary documents in acts related to the episcopal jurisdiction outside of Italy see, e. g., Maria Milagros Carcel Orti, “Documentos pontificios en los registros episcopales del obispo de Valencia Hug de Lluçà (1408–1425),” in *Forschungen zur Reichs-, Papst- und Landesgeschichte. Peter Herde zum 65. Geburtstag von Freunden, Schülern und Kollegen dargebracht*, ed. Karl Borchardt and Enno Bünz (Stuttgart: Hiersemann, 1998), 745–760, esp. 748.

⁷ The partial results of a project still in progress give interesting examples. For the diocese of Como in the period 1458–1484 72 complete copies of the letters (14% of the registered supplications for the corresponding span of time) have been found. For the diocese of Milan in the year 1474 the local documents contain 12 copies of letters, i.e., one third of the cases registered in the penitentiary volumes.

In some cases, one can find the immediate reason for turning to the pontifical authority in documents preceding the supplication. The local material makes it possible to know, for example, that some petitioners appointed proctors to bring their requests from their home to Rome and that others were forced to apply to the Penitentiary by their own bishop or by another local judge. We know, for instance, that a couple living in the suburbs of Como, *Petrus de Zuliis* and *Maria de Zuliis* from Clivadello, commissioned a citizen of Como and a Lombard priest residing at the Roman curia to submit their request for matrimonial dispensation to the pope in 1480.⁸ Their supplication was approved four months later by the *regens* of the Penitentiary, Julianus de Matteis.⁹ For the initial part of the process, a systematic comparison between the persons accused before the episcopal tribunals and the petitioners to the Penitentiary could give concrete information about their decision to send requests to the Roman curia, especially for absolutions and other grants going back to crimes and violations of canon law. But these results would only concern the procedural reasons, leaving the personal motivations unknown.¹⁰

Much more numerous are the documents produced after the approval of the supplications by the curial office. The Penitentiary letters *in forma commissoria* entailed a series of acts recorded by notaries, certifying that the commissioners received the letters, that they verified the *veritas narrationis* and that they gave the requested absolutions, dispensations, or declarations. The most frequent kinds of acts, which may be part of quite a long series, are the *presentatio litterarum penitentie* made by the supplicants or their proctors to the commissioner, which started the process *in partibus*; followed by the *commissio ad recipiendum testes* to a notary or to another trusted person for questioning witnesses about the facts noted in the supplications; the depositions of the witnesses (*dicta testium*), and eventually the *dispensatio*, *absolutio*, or *declaratio* confirming that the grant was effectively given *auctoritate apostolica* by the commissioner. These acts are mostly composed in the form of notarial instruments (*instrumenta publica*), only the definitive grants can be found in the notarial register books or in other local archival collections in the form of public letters (*litterae ad universos*). For the dioceses of the Milanese state, it can be expected to discover such documents for at least 15% to 20% of the entries in the Penitentiary registers.¹¹

To understand the value of these acts as historical sources, it is important to stress that their production proceeded essentially from the commissioners and not from

⁸ Archivio di Stato di Como, *Notarile*, vol. 19/21, fol. 875r-v.

⁹ ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 30, fol. 79v, published in: Paolo Ostinelli (ed.), *Le suppliche alla Sacra Penitenzieria Apostolica provenienti dalla diocesi di Como (1438–1484)*, *Materiali di storia ecclesiastica lombarda, secoli XIV–XVI*, 5 (Milan: Edizioni Unicopli, 2003), 483 (henceforth: Ostinelli, *Le suppliche*).

¹⁰ For a single example see Ostinelli, *Le suppliche*, 84–85.

¹¹ A systematic survey for the diocese of Como revealed the existence of local documents concerning 138 cases registered in the penitentiary volumes (22% of the total number).

the petitioners themselves. In fact, the supplicants just needed to keep the original letters (or supplications) which they had received from the curial office and/or the testimony for the definitive grants given by the commissioners. On the contrary, the *commissarii executores*, that is, in most cases the bishops or the vicar generals acting as judge delegates of the papal authority, retained a record of their acts related to the supplication process as well as of all other acts related to their administrative and judicial activities. Thanks to the work of their notaries, who were continuously involved in the activity of the diocesan curias, we can partly make up for the almost complete loss of the original documents once held by the petitioners.¹²

SINGLE SUPPLICANTS AND THEIR REQUESTS

For a comparison between the local documents and the Roman records it is useful to give a definition of their different types in the diplomatic sense. Most single texts in the Penitentiary registers are summaries or partial copies of the supplications, and even in the section called *declaratorie* and in the greater part of the *diverse forme*, where the curial writers copied the whole *narratio*, the formulary elements are not complete. This means that we often do not know the exact text of the original supplications, although the *registratores* were obliged to retain the relevant canonistic elements.

For example, we can consider a simple request for matrimonial dispensation, registered in an abbreviated form at the end of the pontificate of Paul II, in the same way as many other supplications regarding the same matter:¹³

¹² The records of the episcopal notaries are a fundamental source for the study of church history in late medieval Italy: see Giorgio Chittolini, "Episcopalis curie notarius. Cenni sui notai di curie vescovili nell'Italia centro-settentrionale alla fine del Medioevo," in *Società, istituzioni, spiritualità. Studi in onore di Cinzio Violante*, CISAM, Collectanea, 1 (Spoleto: Centro italiano di studi sull'alto Medioevo, 1994), 221-232; Mariacarla Rossi, "I notai di curia e la nascita di una «burocrazia» vescovile: il caso veronese," in *Vescovi medievali*, ed. Grado Giovanni Merlo, Studi di Storia del Cristianesimo e delle Chiese Cristiane, VI (Milano: EBF, 2003), 73-164. About the episcopal notaries in the Lombard dioceses see Marco Lunari, "De mandato domini archiepiscopi in hanc publicam formam redigi, tradidi et scripsi. Notai di curia e organizzazione notarile nella diocesi di Milano (sec. XV)," *Rivista di Storia della Chiesa in Italia* 49 (1995), 486-508; Cristina Belloni, "Notai, causidici e studi notarili nella Milano del Quattrocento. Baldassarre Capra, notaio, cancelliere e causidico della curia arcivescovile di Milano," *Nuova rivista storica* 84 (2000), 621-646; Massimo Della Misericordia, "Le ambiguità dell'innovazione: la produzione e la conservazione dei registri della chiesa vescovile di Como (prima metà del XV secolo)," in *I registri vescovili dell'Italia settentrionale (secoli XII-XV). Atti del Convegno di Studi (Monselice, 24-25 novembre 2000)*, ed. Attilio Bartoli Langeli and Antonio Rigon, Italia Sacra 72 (Rome: Herder, 2003), 85-140; Cristina Belloni and Marco Lunari (ed.), *I notai della curia arcivescovile di Milano (secoli XIV-XVI)*, Materiali di storia ecclesiastica lombarda, secoli XIV-XVI, 7; Pubblicazioni degli Archivi di Stato. Strumenti 165 (Milan: Edizioni Unicopli, and Rome: Ministero per i beni e le attività culturali, Direzione generale per gli archivi, 2004).

¹³ ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 19, fol. 39v (10 June 1471).

Cumane diocesis.

Paganinus de Sulmo laicus et Cristina Paxine mulier de Solegero, Cumane diocesis, qui 4^o consanguinitatis gradu se actinent, petunt matrimonialiter contrahi et cetera.

Fiat de speciali, Iohannes Baptista episcopus Saonensis regens et cetera.

Rome, apud Sanctum Petrum, .IIII. id. iunii anno septimo.

It is clear that the curial writer retained in this text only part of the supplication he had in his hands as a model, and (re-)organised the elements in order to compose a complete phrase.¹⁴ A large number of transpositions in the registers give just a little information about the substance of the supplication, and comparison with the corresponding documents in the local archives proves that this kind of partial copy can be imprecise not only as far as the identification of the supplicants is concerned, but also as to the contents of the *narratio* and of the *petitio*.

Although the transcriptions of the letters of the Penitentiary in Lombard archives are copies as well, being inserted in the acts of the commissioners, they are in fact complete transcriptions, of which the correctness and integrity are certified by the notaries who wrote them – a fact that can be checked empirically for those letters which were reproduced several times. Since the Penitentiary letters were made directly on the basis of the *supplicationes*, we can generally suppose that, irrespective of the kind of request, the contents of their copies are more reliable than the copies of the supplications in the registers. The information given by the transcribed letters can actually specify or even correct the Penitentiary volumes.

Concerning the copied letters, it is also important to consider that they are always inserted in other documents produced by the commissioners, so that these inserting acts as well can add precision to the contents of the supplications and/or of the letters. And finally, the same kind of precision can then be found in the other local documents directly related to the supplication processes, such as the *dicta testium* or the local commissions, even if they do not include any copies of the Penitentiary documents.

In fact, only on behalf of local material can we know precisely the family names, the origin and the social extraction of many supplicants. For the example quoted above, one can use the written decision of the vicar general of Como, who gave the supplicants the requested dispensation on October 25, 1471, in the presence of the bride's father. The complete text of the inserted Penitentiary letter and of the inserting *dispensatio*,

¹⁴ The forms of abbreviation and modification in the registered texts are various even during a single pontificate, so that an evolutionary line does not seem to exist from completer texts towards more abbreviated entries or *vice versa*. The most radical abbreviation was used during the Holy Year 1450, when the texts in volumes 3 and 4 of the Penitentiary series at the Vatican Archives were reduced to the basic elements of the names and the kind of requests: see the Introduction to Ludwig Schmugge, Krystyna Bukowska, Alessandra Mosciatti and Hildegard Schneider-Schmugge (ed.), *Repertorium Poenitentiariae Germanicum II: Nikolaus V.* (Tübingen: Niemeyer, 1999).

integrating with each other, tell us that the petitioners came from a small village (Soltogio) in an alpine valley (Valtellina), and that they were from two well-known families in the local society. Moreover, the texts reveal the real nature of the legal impediment to the marriage – that is, affinity instead of consanguinity, as recorded in the Roman register:¹⁵

*Universis et singulis tam clericis quam laycis cuiusvis status, gradus, qualitatis aut conditionis existant, hoc presens instrumentum inspecturis, Stephanus de Aplano decretorum doctor, canonicus ecclesie Cumane ac [...] episcopi Cumani et comitis in spiritualibus vicarius generalis, commissariusque super infrascriptis litteris ut infra sequitur deputatus, salutem in Domino. Universitati vestre notum facimus et manifestum quod ad nostri presentiam accedens Bartholomeus de Soltogio Valisteline, Cumane diocesis, filius quondam Thami, missus, nuntius et procurator et nomine **Paganini de Sulmo filii quondam Zanis**, layci, et **Cristine de Soltogio filie quondam Bartholomei, mulieris Valisteline** Cumane diocesis, in infrascriptis litteris principaliter nominatorum [...], litteras reverendissimi in Christo patris et domini domini Philippi miseratione divina episcopi Albanensis, curam regentis sacre penitentie apostolice, cum sigillo officii prefate penitentie apostolice in cera et cordula rubeis impendente [...] nobis dictis nominibus exhibuit et originaliter presentavit, huius tenoris, videlicet:*

*“Venerabili in Christo patri dei gratia episcopo Cumano vel eius vicario in spiritualibus, Philippus miseratione divina episcopus Albanensis, salutem et sinceram in Domino caritatem. Sedis apostolice providentia circumspecta nonnumquam rigorem iuris mansuetudine temperat, et quod sacrorum canonum prohibent instituta de gratia benignitatis indulget, prout personarum et temporum qualitate pensata id in deo salubriter expedire cognoscit. Sane ex parte **Paganini de Sulmo**, layci, et **Cristine Paxine de Soltogio**, mulieris vestre diocesis, nobis oblata petitio continebat quod ipsi ex certis rationabilibus causis desiderant invicem matrimonialiter copulari, sed quia **quarto affinitatis gradu** invicem se attinent eorum in hac parte desiderium adimplere non possunt dispensatione apostolica super hoc non obtenta, quare supplicari fecerunt humiliter iidem exponentes eis super hiis per sedem ipsam de opportune dispensationis gratia misericorditer provideri. Nos itaque eorum in hac parte supplicationibus inclinati auctoritate domini pape, cuius penitentie curam gerimus, et de eius speciali mandato super hoc vive vocis oraculo nobis facto circumspectioni vestre commitimus quatenus si est ita cum ipsis Paganino et Cristina quod impedimento affinitatis huiusmodi non obstante possint inter se matrimonium libere contrahere et in eo postquam contractum fuerit licite remanere misericorditer dispensetis, dummodo dicta mulier propter hoc ab aliquo rapta non fuerit, prolem suscipiendam exinde legitimam decernentes. Dat. Rome apud Sanctum Petrum sub sigillo officii penitentie, quarto id. iunii pontificatus domini pape secundi anno septimo.” Signat. in plica ab extra: Ia. Girardi.*

¹⁵ Archivio di Stato di Como, *Notarile*, vol. 74, fol. 309r-v.

[...] *Post quarum quidem litterarum prefati suppremi penitentiarii [presentationem ...] fuimus debita cum instantia requisiti, quatenus ad dispensationis gratiam [...] procedere deberemus. Nos autem presentationem prefatarum litterarum nobis per dictum Bartholomeum procuratorem nominibus ut supra factam, ut premittitur, ea qua decuit reverentia accepimus et admissimus reverenter [...] et ad earum exequutionem procedentes informationes de et super contentis in prefatis litteris habere procuravimus et sumpsimus, per quas comperuimus exposita et contenta in prefatis litteris vera esse et veritate fulciri. Et sumpto iuramento a dicto Bartholomeo, [...] presentis instrumenti tenore auctoritate per prelibatum reverendissimum dominum dominum episcopum Albanensis curam regentem sacre penitentie apostolice ut premittitur nobis commissa, et qua fungimur in hac parte, vigore et in exequutione litterarum ipsius domini domini episcopi Albanensis et suppremi penitentiarii apostolici nobis presentatarum, tenoris ut supra, omnibus modo, iure, via, auctoritate, causa et cetera cum ipsis Paganino et Cristina quod **impedimento affinitatis huiusmodi non obstante** possint inter se matrimonium libere contrahere et in eo, postquam contractum fuerit, licite remanere, misericorditer dispensamus, prolemque exinde suscipiendam legitimam decernendo [...]*
Datum et actum Cumis, in domo nostre habitationis [...].

Thanks to the local material, about 15% of the entries in the penitentiary registers concerning the diocese of Como can be completed or corrected as far as the identification of the petitioners and/or the exact nature of their request is concerned.¹⁶

As the dispensation given to Paganinus and Cristina shows, the inserted documents and transcriptions of the letters may also give further elements for the diplomatic and the procedural study of the requests. This particular case proves, for example, that the *intitulatio* of the Penitentiary letters contained the name of the Major Penitentiary, although other members of the office could approve the supplications. Besides the formulary elements, the local transcription then gives the whole *datatio* of the letter, a concise description of the seal, and the name of the *scriptor* (Ia. Girardi), mentioned by the local notary as an unmistakable sign of visual identification of that particular Penitentiary letter.¹⁷

¹⁶ I. e., 90 cases against 630.

¹⁷ I. e., the notation in the position n. 8 according to the model published in Thomas Frenz, *I documenti pontifici nel medioevo e nell'età moderna*, Littera Antiqua 6 (Città del Vaticano: Scuola Vaticana di Paleografia, Diplomatica e Archivistica, 1998), (unnumbered page preceding p. 92). About the presence of descriptive elements of the Penitentiary documents in notarial records from the 13th century in Lucca see Meyer, "Quellen," 335-337. The diplomatics of the Penitentiary letters is discussed in: Filippo Tamburini, "Note diplomatiche alle «lettere» del Cardinale Penitenziere (secoli XIV-XV)," *Annali della scuola speciale per archivisti e bibliotecari dell'Università di Roma* 11 (1971), 122-131; Filippo Tamburini, "Note diplomatiche intorno a suppliche e lettere di penitenzieria (sec. XIV-XV)," *Archivum Historiae Pontificiae* 11 (1973), 149-208; Matthäus Meyer, *Die Pönitentiare-Formularsammlung des Walter Murner von Strassburg. Beitrag zur Geschichte und Diplomatik der päpstlichen Pönitentiare im 14. Jahrhundert*, Spicilegium Friburgense 25 (Freiburg/Switzerland: Universitätsverlag, 1979); José Trenchs, "La Penitenciaria apostolica: documentos y registros," *Boletín de la*

THE MASS OF PETITIONERS

Local sources are not only essential in order to understand the circumstances of the individual petitions, but they can also be valuable for the study of the entire group of requests coming from a certain diocese or region. It is obvious that the approximate total number of requests can be found only in the Penitentiary volumes, but the local material can help us be more precise. First, it is possible to fill part of the gaps in the register series, as for example for the pontificates of Eugene IV to Calixtus III, for the first months of the pontificate of Pius II and for a brief period during the pontificate of Paul II, whose records have not been preserved.¹⁸ Secondly, in the local archives there are letters concerning supplications which are not recorded in the preserved registers, even though they were handled in the covered periods and the requests concerned routine cases. On February 12, 1466, for example, a cleric named Ambrogio Cagnola from the diocese of Milan received a dispensation which allowed him to be ordained to the major orders despite the lack of a part of his right forefinger, showing the vicar general of his ordinary a letter drawn up in the name of the Major Penitentiary Philippus Calandrini on the basis of a supplication which is not transcribed in the registers at the Vatican Archives.¹⁹ Similar findings in local archives prove that the system used by the curial office could not prevent forgetting a certain number of isolated cases – a number that cannot be considered marginal. For the Lombard dioceses, it can be estimated that

Sociedad Castellonense de Cultura 68 (1982), 653-692; Salonen, *Penitentiary*, 98-102; Ostinelli, *Le suppliche*, 88-91, 97-103.

¹⁸ For a list of the supplication registers of the Penitentiary see Salonen, *Penitentiary*, 425-426. The lack of the registered supplications from the first months of the pontificate of Pius II is discussed in Ludwig Schmugge, Patrick Hersperger, and Béatrice Wiggerhauser, *Die Supplikregister der päpstlichen Pönitentiarie aus der Zeit Pius' II. (1458-1464)*, Bibliothek des Deutschen Historischen Instituts in Rom 84 (Tübingen: Niemeyer, 1996), 57. About the incomplete registers from the pontificate of Paul II see Ludwig Schmugge, Peter Clark, Alessandra Mosciatti, Wolfgang Müller, and Hildegard Schneider-Schmugge (ed.), *Repertorium Poenitentiariae Germanicum V: Paul II.* (Tübingen: Niemeyer, 2002), IX.

¹⁹ Archivio di Stato di Milano, *Notarile*, vol. 1326. The name of Ambrogio Cagnola can be found in the Penitentiary volumes under the date of 18 March 1466, when he applied for absolution for having read the sacred *epistula* although he had just received the subdeaconal consecration: ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, Vol. 14, fol. 174r. It is possible, but it is not sure, that this supplicant was the same person as the homonymous son of a Milanese citizen († 1485), who entered the *familia* of bishop Lazzaro Scarampi of Como and received several benefices in the dioceses of Como and Milan. Such identification could explain the need for absolution and dispensation in the first months of 1466, because in that period Cagnola was trying to obtain a canonry of the cathedral church in Como: see Elisabetta Canobbio, "«Forenses obtinebunt canonicatus et nullam fatient residentiam». Ricerche sulle istituzioni ecclesiastiche di Como nell'età sforzesca (1450-1499)" (doctoral thesis, Università Cattolica del Sacro Cuore di Milano, 1997), 203.

about 1 to 2% of the requests were not transposed into the registers: in about 6000 entries from 1438 to 1484, in fact, the total could increase by 60 to 120 supplications.

The comparison between the Penitentiary records and the local documents should also warn us that we have to be careful in making statistical values for the mass of supplicants, particularly about their personal identity and their social status. The entries in the registers actually allow recognising with absolute certainty only two groups: the laity and the clerics (or the candidates to become clerics). As to the other elements of group identification, as pointed out for the family names and for the geographical provenance, the precision of the entries cannot be considered sufficient. The distinction between nobles and non-nobles is particularly difficult for the Lombard supplicants. According to the Penitentiary records, only 1% of the supplicants were members of the nobility, being called *nobilis* or *miles*. In reality, thanks to the letters and other documents *in partibus*, we can assume that a much greater share of the total number were part of this social group,²⁰ because the writers of the registers (or, more probably, the writers of the supplications) seem to have systematically ignored the country nobility and to have privileged only the urban nobility of the major cities with the attribute of *nobilis*.²¹ Furthermore, a reliable identification of the social status concerning urban supplicants is made impossible by the non-systematic use of the attribute of *civis*.

Despite such statistical inaccuracies, however, local documents confirm that the elite groups of north-Italian society were scarcely represented among the petitioners to the Penitentiary. There is an almost total lack of requests from the higher clergy, except for a few isolated supplications about “administrative” matters,²² and only sixteen members of the ruling family Visconti turned to the Penitentiary, applying mostly for confession letters.²³ It is evident that people of higher social class could follow other ways to obtain the same kind of graces granted by the penitentiary. The most decisive factor seems to have been personal contact with the officers of the diocesan curias, which could know at every moment if it was possible to receive the “Roman” graces by con-

²⁰ In the diocese of Como the *nobiles* were at least 6% of the petitioners, in the other 11 Lombard dioceses it can be estimated that the *nobiles/milites* were 5% to 8% of the total number of supplicants.

²¹ Ostinelli, *Le suppliche*, 60, 129-130; Ludwig Schmugge, *Kirche, Kinder, Karrieren. Päpstliche Dispense von der unehelichen Geburt im Spätmittelalter* (Zurich: Artemis, 1995), 122-124.

²² Carlo da Forlì, archbishop of Milan, applied 1459 for a confessional letter *in forma «Si inveneris»*; Carlo Pallavicino, bishop of Lodi, supplicated 1476 for a licence to celebrate the mass on a portable altar: see ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 8, fol. 321v; Vol. 25, fol. 102r. About these prelates see Carlo Marcora, “Carlo da Forlì arcivescovo di Milano,” *Memorie storiche della diocesi di Milano* 2 (1955), 235-333; Luigi Manzini, *Mons. Carlo Pallavicino, vescovo di Lodi dal 1456 al 1497* (Lodi: Ass. S. Maria delle Grazie, 1973).

²³ ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 6, fol. 4r; vol. 7, fol. 411v; vol. 13, fol. 250r; vol. 26, fol. 80v. Other petitioners called *de Vicecomitibus* cannot not be ascribed to the ruling family, because they are not defined as *nobiles*: see ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 4, fol. 212r; vol. 7, fol. 325v; vol. 11, fol. 44r; vol. 14, fol. 68r; vol. 15, fol. 25v; vol. 24, fol. 189r.

tacting Lombards who were active at the different *dicasteria* of the papal curia, by applying directly to the bishop's staff or by turning to the numerous nuncios or legates coming to the northern Italian region.²⁴

NOT AN IMMEDIATE NEED FOR GRACE

Beyond the single cases, some observations can be made concerning the entire group of requests and the persons or the institutions involved in the supplication process as well as their acts. It is certainly true that the supplications to the Penitentiary are symptomatic of the contact between Christians and the highest ecclesiastical authorities at the end of the Middle Ages. And, of course, some petitioners turned to the papal authority to satisfy a spiritual need. But such cases are generally not represented in the local archival material, which reflects almost exclusively the "administrative" side of the dispensations, absolutions, declarations, or licenses. The entries in the Penitentiary registers show that a large majority of the supplicants from the Lombard dioceses were interested in routine grants, such as matrimonial dispensations or dispensations *ex defectu etatis*.²⁵ And the surviving local sources demonstrate that the main role in the long and sometimes complicated supplication process was played by the ordinaries and their staff, so that only a minor number among the supplicants appear to have acted of their own accord. Playing systematically the role of *executores* for the commissions received by the Penitentiary, the bishop's officers of Lombardy were the principal referral for the people in their dioceses who needed to regularise their juridical position after having broken the rules of canon law or before doing it – and *vice versa*. Thanks to the large number of cases they treated, these groups of clerks and laymen professionally active at the bishops' churches guaranteed satisfying assistance for a successful claim to the Roman offices. The diocesan centres monopolised the transmission of requests by offering the assistance of the bishops' staff in bringing the supplications to Rome and in carrying out the necessary steps of the "well of grace". Moreover, there is documentary evidence that

²⁴ Some preliminary observations in: Paolo Ostinelli, "L'offerta della grazia. Dispense e assoluzioni concesse da vescovi e inviati pontifici in Lombardia nel XV secolo," in *Päpste, Pilger, Pönitentiarie*, ed. Meyer, Rendtel, and Wittmer-Butsch, 531-549. Concerning the "competition" between the different offices of the Roman curia see Patrick Zutshi, "Inextricabilis curie labyrinthus – the Presentation of Petitions to the Pope in the Chancery and the Penitentiary during the Fourteenth and First Half of the Fifteenth Century," in *Päpste, Pilger, Pönitentiarie*, ed. Meyer, Rendtel, Wittmer-Butsch, 393-410 (with referrals to precedent studies).

²⁵ About the large interest of the north-Italian petitioners in these kinds of grants during the pontificate of Pius II see Kirsi Salonen, "The Penitentiary under Pope Pius II. The Supplications and their Provenance," in *The Long Arm*, ed. Jaritz, Jørgensen, and Salonen, 19-28. About the increasing number and percentage of Italian supplications for matrimonial dispensation in the following decades see Ludwig Schmutge, "Deutsche Ehen vor römischem Gericht. Matrimonialdispense der Pönitentiarie aus deutschsprachigen Gegenden Europas (1455–1484)," in *The Roman Curia*, ed. Salonen and Krötzl, 118.

the need for grace was directly connected with an influence of the clergy that was not declared in the supplications. Concerning matrimonial dispensations, which were the most frequent grants in this region, it can clearly be seen that the diocesan government acted in collaboration with the parish clergy to induce the inhabitants of the peripheral villages to legalise their positions.²⁶ Turning to the Penitentiary can thus be considered a peculiar form of contact between the peripheral regions of Italy and the centre of Christianity – a contact which no doubt had a remarkable significance for the petitioners, but also for the government of the Church at the diocesan level.

²⁶ Ostinelli, *Le suppliche*, 136-141.

CANON LAW IN NORWAY
ILLUSTRATED BY THE PENITENTIARY TEXTS:
AN EXAMPLE OF A EUROPEAN
CENTRE–PERIPHERY PERSPECTIVE

Torstein Jørgensen

INTRODUCTORY COMMENTS

The preserved text material from the protocols of the Apostolic Penitentiary Office is a rather late phenomenon as seen from a medievalist's point of view. The section of these holdings normally referred to as the antique text collection, containing the supplications predating the Council of Trent, consists of some few scattered volumes from the first half of the fifteenth century, followed by a series of more regular registrations appearing from around 1450 onwards. However, if turning to the *substance matters* dealt with in the texts, these are by no means a novelty of the fifteenth century. In fact, the actual contents set down in what came to be the 'reserved cases' treated by the fifteenth- and early sixteenth-century Apostolic Penitentiary, were the result of a long historical process. In the period between the little Renaissance of the twelfth and the great Renaissance of the fifteenth century, the theological, societal and institutional brickwork necessary for the formalised procedures functioning at the time of the Penitentiary in its high peak epoch¹ gradually fell into place.

In this article we will cast a glance at the two main arenas that formed the historical backdrop for the late medieval activity related to the Papal Penitentiary. On the one hand, we will turn our attention to some main lines in the development of the theology and ideology inside the walls of the Roman Church with a special view to the formation of canon law. On the other hand, we will look at the process of the development of local conditions *in partibus* – in our case the vast but sparsely populated lands of the Norwegian church province of Nidaros – which partly lived their own separate life

¹ From the pontificate of Nicolas V (1447–1455) to the Council of Trent (1545–1563).

and partly were shaped by influence from the bigger world, including the Church. What is of particular interest here is the actual interplay between the two, which forms the immediate explicatory background against which the actual texts of the penitentiary petitions were set.

Or put in other words, the texts we have in front of us in the penitentiary protocols are on the one hand the direct products of the theologically based judicial system shaped in the Church from the twelfth to the fifteenth century *and* a reflection of the actual state of affairs in the local communities of Western Christendom on the other. The fact that we can observe a high degree of similarity among the texts regardless of their geographical provenance shows that the penitentiary ideology and procedures were something that permeated Western Europe as a whole. But the also easily observable fact that there are variations in the texts from region to region with respect to numbers, frequency, proportions of petitions between the different categories as well as a total lack of certain types of petitions from certain regions² is a strong pointer that distinctively local conditions also played their part.

Finally, we will, on the basis of our findings on the interrelation between canon and national legislation in Norway, make use of the supplicatory material from the Penitentiary to give some examples on how these matters also put their mark on the lives of Norwegian fifteenth century individuals.

SOME OF THE MAIN LINES OF THE CODIFICATION OF A CANON LAW CORPUS AND THE NORWEGIAN PROCESS OF LAW FORMATION

The historical period when ecclesiastical law turned from a state of scattered and non-systematised sources, such as bullas, decrees and treatises mostly dealt with by unauthorised law schools,³ into a unified corpus⁴ coincides well with the period when the old Norwegian provincial laws found their way into writing and into the codification of a Land Law (*Landslov*), that is, a law in force in the entire realm.⁵ The epoch-making event in this process on the supranational ecclesiastical level was, of course, the twelfth century compilation of *Decretum Gratianum* followed by the additions of the subsequent

² See, for instance, the overrepresentation of matrimonial cases from Dubrovnik: Ana Marinković, "Social and Territorial Endogamy in the Ragusan Republic: Matrimonial Dispenses during the Pontificates of Paul II and Sixtus IV (1464–1495)," in *The Long Arm of Papal Authority: Late Medieval Christian Peripheries and their Communication with the Holy See*, ed. Gerhard Jaritz, Torstein Jørgensen, and Kirsi Salonen, 2nd ed. (Budapest: CEU Press, 2005) 135–155.

³ Anders Winroth, *The Making of Gratian's Decretum* (Cambridge: Cambridge University Press, 2000).

⁴ *Decretum Gratianum* or *Concordia Discordantium Canonum*.

⁵ At the same time the King (State) assumed a more impersonal role of being the Law as well as the addressee of fines instead of or in addition to the offended party.

centuries such as the *Liber Extra*,⁶ the *Liber Sextus*,⁷ and the *Clementinae*,⁸ which in the course of events led to the formation of *Corpus iuris canonici*. In addition, one also has to take into account the non-official collection of the *Extravagantes*.⁹

In the Norwegian arena, since the Christianisation of the country around the year 1000 the formulation of laws in religious affairs had been a matter to be dealt with by two parties: the king and the Church.¹⁰ Several declarations and treaties from the twelfth and thirteenth century were relevant in this process, but probably the most important was the agreement between King Magnus the Law-Mender and Archbishop Jon the Red, signed in 1277,¹¹ the so-called *Compositio Tunsbergensis* or the Tønsberg Concordat.¹² The treatise was confirmed on later historical occasions throughout the Middle Ages.¹³ Another milestone in the process of development was a meeting in 1478, at which the Danish-Norwegian King Christian I came to an agreement with the Norwegian National Council, and in which the drawing of a demarcation line between civil law and church law was a main objective. The National Council was at that time chaired by the archbishop of Nidaros.

A guiding factor for the Church's actual administration of grace and forgiveness in the Middle Ages was her concept of penance. In principle this was mainly a theological *locus*, the importance of which is accentuated both by the attention paid to it in the wider operations of the medieval Church and in a more specified sense by the focus

⁶ *Decretales Gregorii IX*, 1234, by Raymond de Pennafort.

⁷ *Decretales Bonifatii VIII* (1295–1303).

⁸ Promulgated by Pope John XXII (1316–1334).

⁹ The *Extravagantes* contain collections of papal decretals and canons from the ecumenical councils of 1179 and 1215 onwards, of which the *Extravagantes Joanni* of 1325, and the *Extravagantes communes* from later in the same century are the most important.

¹⁰ Cf. the decisions of *Mostrating* 1024 presented as agreements between King Olav Haraldsson the Saint and Bishop Grimkell. Fridtjov Birkeli, *Tolv vintrer hadde kristendommen vært i Norge* (Oslo: Verbum, 1995) 165–170.

¹¹ For the research history on this document, unfortunately most of what has been written is in Norwegian: Jens Arup Seip, *Sættargjerden i Tunsberg og kirkens jurisdiksjon* (Oslo, 1942); Gudmund Sandvik, “Sættargjerda i Tunsberg og kongens jurisdiksjon,” in *Samfunn, rett, rettferdighet: Festskrift til Torstein Eckehoffs 70-årsdag*, ed. Anders Bratholm et al. (Oslo: Tano, 1986), 566 ff.; Anne Irene Riisøy, *Stat og kirke: rettsutøvelsen i kristenrettsaker mellom Sættargjerden og reformasjonen*, Tingprosjektets publikasjoner 22 (Oslo, 2004); Lars Hamre, “Ein diplomatarisk og retthistorisk analyse av Sættargjerda i Tunsberg,” *Historisk Tidsskrift* 83 (2003), 381–431 (henceforth: Hamre, “Sættargjerda”); Elias Orrman, “Church and Society,” in *Cambridge History of Scandinavia I, Prehistory to 1520*, ed. Knut Helle (Cambridge: Cambridge University Press, 2003), 446–47, 451.

¹² The Norwegian version of the document is called *Sættargjerden*. *Diplomatarium Islandicum* II, n. 65 [henceforth: *Dipl. Isl.*]. For the Latin text and translation into modern Norwegian, we have in this paper used Sverre Bagge, Synnøve Holstad Smedsdal, Knut Helle (ed.), *Norske Middelalderdokumenter i Uvalg*, (Bergen: Universitetsforlaget, 1973), 136–151 (henceforth: *Norske Middelalderdokumenter*).

¹³ For instance, in the Agreement of Skara of 1458, *Norges Gamle Love*, 2 Rekke, II, n. 81 (henceforth: NGL); vidimated in Oslo 1514: Hamre, “Sættargjerda,” 388.

attached to it in canon law. In the latter context the famous *Treatise on Penance* in Gratian's *Decretum* constitutes a main source.¹⁴ The document points out penance as the binding link between God giving grace and human sin. In theological terms the act of penance basically consists of contrition of the heart (*contritio cordis*), confession by mouth (*confessio oris*) and satisfaction by good works (*satisfactio operibus*). All these three elements are visible in the ideology and activities of the late medieval Apostolic Penitentiary, and in the texts of the supplications.

Within the confines of this article, it will not be possible to enter into the details of the complex process leading from this basic notion to the actual law codes and the organisational apparatus which the late medieval church possessed for the treating of penance. But we should note that the dialectic of these two poles was at the same time an existential element in the lives of every medieval individual. And when looking into what later became the penitentiary causes reserved for the pope to decide, such as matrimonial matters, perjury, simony, impediments for access to higher ecclesiastical orders, discipline of the clergy, and violence and killing related to the clergy, one should *not only* look at what canon law says about these cases specifically in terms of laws and rules. For a deeper understanding one should also take into account the Church's basic tenet of herself as the administrator of Saint Peter's keys, as taught so illustratively in Gratian's treatise.¹⁵ Thus, when reading the actual supplications in penitentiary registers, it is vital to bear in mind that they were not only acts of judicial consideration, but acts of a priestly administering of God's grace.

If we look into the substance matters of the *Compositio Tunsbergensis* of 1277,¹⁶ the first issue deals with the dispute between king and Church over the jurisdiction of certain types of causes. The claim of the archbishop for causes belonging to the ecclesiastical forum to be tried exclusively by ecclesiastical courts was a main point on the Gregorian programme of *libertas ecclesiae*. According to canon law this question belonged

¹⁴ Emilius Friedberg, *Corpus Iuris Canonici, Editio Lipsiensis Secunda* (Graz: Akademische Druck- und Verlagsanstalt, 1959), II,XXXIII,III, 1159-1250. How much of the treatise was originally part of *questio* III, is debated, but in our context it is the fact that the text acquired authoritative position that is important.

¹⁵ The treatise, which constitutes the 3rd *questio* of *causa* 33 of *Decretum* II, is again divided into the following seven *distinctiones*:

- 1) Contrition in the heart versus confession by the mouth and works of satisfaction;
- 2) the virtue of Love as a lasting versus losable gift;
- 3) whether penance can be repeated;
- 4) whether already forgiven sin may be forgiven again;
- 5) examination of matters to be taken into consideration when undergoing penance;
- 6) the question to whom confession should be made;
- 7) whether penance undertaken because of fear of death is effective.

A word of thanks is here directed to Fr. Augustine Thompson of the University of Virginia for putting his translation of parts of the *Treatise* at my disposal.

¹⁶ Two historical events lay behind the agreement of 1277: a national gathering in Bergen, 1273 and the Council of Lyon, 1274.

to the area of *ius commune*, which implied that it was a matter of universal validity, and as such non-negotiable. The archbishop was, however, well aware that by this claim for exclusive ecclesiastical jurisdiction he acted *against the people* since his claim was *against custom* and since the trial of such causes by secular judges was a practice *ex consuetudine antique* in Norway.¹⁷ But for the archbishop, who at this time stood steadfast on the statutes of canon law, the regard for custom had to yield to the regard for the universal validity of the *ius commune*.

However, with respect to the archbishop's claims under the *ius particulare*, which he also presented on this occasion, matters stood differently. The issue at stake here was the restitution of ecclesiastical privileges which he claimed had been obtained by the Church in the preceding twelfth century. The main points were, firstly, the right of the Church to have a decisive influence on the succession of new kings and, secondly, the privilege of having the Crown sacrificed to the Church on Saint Olav's altar.¹⁸ Although the controversy was sharp, both parties had a strong and serious interest in solving the disagreement by negotiation for the purpose of avoiding *perturbacio*¹⁹ and preserving peace. The result was, in short, that the archbishop in these matters was the one to yield by renouncing the privileges bestowed upon the Church in the 1160s, but after all, this was no heavy concession since the privileges had never really been put into effect. Instead, the archbishop obtained the king's consent to confirm the different rights of the Church already stated in the Christian sections of the old provincial law codes and their representations in national laws. The main concession on the part of the king in this agreement was his renunciation of royal jurisdiction "in matters of Church Law – *causarum ad ecclesiam spectantium*" which he, as the document states, "renounces fully – *rentenciarit ... omni iuri*."²⁰ Such cases were, again in the words of the document:

Cases in which clergymen are at law with one another or are sued by laymen, matrimonial cases, birth, patronage, tithes, holy vows, wills – especially when gifts to churches are involved – monasteries and holy foundations, protection of pilgrims coming to Saint Olav's or other Norwegian cathedrals' doorsteps. Further, cases concerning church property, sacrilege, perjury, usury, simony, heresy, concubines, adultery and incest and all other things which in any way may belong to the ecclesiastical forum according to separate jurisdiction.²¹

¹⁷ *Norske Middelalderdokumenter*, 139.

¹⁸ From the *Law on succession to the Throne* of 1163, NGL 1. Række, I, 3, and King Magnus Erlingsson's *Letter of Privilege* of 1163–1172, NGL 1. Række, I, 442–444.

¹⁹ *Norske Middelalderdokumenter*, 141.

²⁰ *Norske Middelalderdokumenter*, 143.

²¹ Our translation from *Norske Middelalderdokumenter*, 143: *Omnes cause clericorum quando inter se litigant uel a laicis impetuntur, matrimonium, natalium, iuris patronatus, decimarum, votorum, testamentorum – maxime quando agitur de legatij ecclesijs et pijs locis et religiosis –, tuicio peregrinorum visitantium limina beati Olavi et aliarum ecclesiarum cathedralium in Norwagia et eorum cause. Item cause possessionem ecclesiarum, sacrilegij, periurij, usurarum, simonie,*

However, the renunciation on the part of the king was, in these cases also, not so total after all, for at the end of the list a decisive reservation was added, namely that of “royal right in cases in which, according to custom or the laws of the country, fines are to be imposed.”

It is not difficult in this list to recognise the canon law distinction between cases claimed to belong to ecclesiastical jurisdiction according personal status (*ratione personae*) and according to content (*ratione materiae*). We should also note that the *Compositio Tunsbergensis* in connection with criminal cases under the second category also touches indirectly on the relation between sin (*culpa*) and crime (*crimen delictum*), which is a most interesting question in itself, stretching, however, beyond the scope of this article. The treatment of sin *in foro interno* was, naturally enough, *not* a topic of the *Compositio*; neither were purely secular crimes (*delicta mere civilia*). What does appear as a main point of the agreement, however, is an attempt to clarify the rights of the Church in the treatment of purely ecclesiastical cases (*delicta mere ecclesiastica*) and mixed cases (*delicta mixta*) in matters pertaining to *forum externum*. But any detailed reflection on the demarcation line between cases *ad ecclesiam spectant mero iure* and cases also to be solved *regio iure*, is unfortunately not given.

It is also worthwhile noting that the *Compositio* does not, like the older provincial law codes, contain a separate section of a Christian Law (*kristenrett*). The reason for this seems to have been the fact that the right to compose such a law code at this point of time had become a controversial matter of dispute and it remained so also in the aftermath of the concordate. The archbishop continued to maintain that this was an exclusive right of the Church, whereas the king maintained that it was a matter to be dealt with by king *and* Church in accordance with old Norwegian tradition. Since no agreement on this issue was reached, Archbishop Jon composed such a Christian Law on his own initiative, which, however, was never recognised by the civil authorities. Still, it was often used.²² In anticipation of a new Christian Law, based on approval from the king and the Church, the king declared in both 1316 and 1327 that the Old Christian Law should be in force.

The reference in the *Compositio* to cases in which fines were involved according to custom and the laws of the country was also an object of continued disputes in the decades after 1277. An agreement between King Magnus Eriksson and Archbishop Pål Bårdsson in 1337 prescribing in detail how ecclesiastical and civil judges should share

heresis, fornicationis, adulterij et incestus et alie consimiles que ad ad ecclesiam spectant mero iure salvo semper regio iure in hijs causis ubicumque debetur ex consuetudine approbata uel legibus regni multa pene pecuniarie persoluenda.

²² NGL 1. Række, II, 339-386

power is a good example of this process.²³ After 1350 the civil authorities composed a new Christian Law. This gave concessions to the Church on several points.²⁴

FURTHER DEVELOPMENT IN NORWAY DURING THE FIFTEENTH CENTURY: SOME MAIN MILESTONES

Several documents are preserved from the fifteenth century testifying how the division of authority between pope and king was handled in this period. We have already mentioned the confirmation of the *Compositio* in a declaration by King Christian I in 1458.²⁵ As matters reserved for ecclesiastical jurisdiction, the declaration, however, lists only a few of those mentioned in the *Compositio*: concubines, incest, perjury and adultery. But the document includes a general reference to “many other articles written in the mentioned *compositio*.”²⁶ And it adds a new one: sponsorship.²⁷ The document also states that many of the old regulations had been violated and that complaints had come from the clergy about impediments put in their way when trying to execute their rightful duties. What we see here is probably a situation in which the principal theory was more or less intact, whereas the actual practice was not that consistent.

In 1478, the issue was again the subject of an attempt to draw up a demarcation line between ecclesiastical and civil law.²⁸ The issue was dealt with in a joint decree from King Christian I and the Norwegian National Council, the latter chaired by the archbishop, with all the other bishops as members. The decree again takes up some of the *delicta mixta* listed in the *Compositio* which entail punishment in some form or another. In particular, the document contributes to clarifying which kind of jurisdiction the two kinds of courts possessed and to what extent they had the right to recover fines in the different kinds of cases.

Cases of incest in the first and second degrees, as well as sex with animals and against nature, are declared as mixed cases, with the culprits to be sentenced as outlaws. Their property should be confiscated and distributed half and half between king and Church. Adultery and concubinary in the third and fourth degrees, however, are defined as irrelevant to the king²⁹ and falling under Church Law only. Adultery and bigamy are also to be fined half to the king and half to the Church, but the judicial power in these

²³ NGL 1. Række, III, 161-162.

²⁴ Nye Borgartings Kristenrett, NGL 1. Række, IV, 160-182.

²⁵ King Christian was at this time king of Norway, Denmark and Sweden. NGL 2. Række, II, 140-144.

²⁶ ... *manghom slerom articulis, som standa j fornefnda composicione.*

²⁷ *jadderscap.*

²⁸ NGL 2. Række, II., 270-271.

²⁹ ... *ath kongens ombodtsmandt skulle ei beware seg meth frille lefnit, bordome eller skildskaff i tredie eller fierde, och ingen secht ther aff tage i noget maade.*

cases is said to belong to the Church.³⁰ Perjury is also mentioned as a mixed case, which according to the contents of each case should be tried either by civil or ecclesiastical courts with the right of the respective courts to impose fines in their own cases. These are the only concrete matters that are mentioned *expressis verbis* in the four articles of the decree. Probably we should see this as an indication that they were the most burning at the time. It is stated at the end of the document, however, that the judicial power in all other cases should be judged by king or Church in accordance with the regulations of Christian Law.³¹

NORWEGIAN DOCUMENTS RELEVANT FOR THE INTERPRETATION OF THE PENITENTIARY SUPPLICATIONS

Norwegian documents from the period are not abundant, referring directly to the approximately 150 petitions from the church-province of Nidaros preserved in the penitentiary protocols.³² But the general negative picture does contain some positive exceptions and some of the documents contain pieces of information which are helpful for a better interpretation of the penitentiary supplications.

However, before entering into our selected examples from the penitentiary material, some general points have to be mentioned. Firstly, it is important to note that supplications on reserved penitentiary matters were often dealt with by other units of the papal court besides the Penitentiary. This was also the case for the Norwegian material. Often these petitions were dispatched from clergymen in high offices on behalf of groups of people under their authority.³³

Secondly, it is important to note the frequent habit of the pope to delegate authority for archbishops, abbots and apostolic delegates to grant grace in reserved matters. This procedure explains the absence of such cases from the actual geographical areas in certain periods. A good example of such an incident in the case of Norway is a concession by Pope Pius II granting Archbishop Olav Trondsson the right to absolve in cases of violence against the clergy.³⁴ We have found no preserved document in Norwegian sources testifying that Archbishop Olav ever made use of this authority, but one

³⁰ ... faller theris goetz belthenn under kongen och belten under kirken end domes skulle thee maall under kirke dome.

³¹ Item all anner maallefne mellom kirkenn oc kongisdome skulle bliffve at affver dome oc saager effther som christenretten udviser.

³² These supplications are published in Torstein Jørgensen and Gastone Saletnich, *Synder og Pavemakt: Botsbrev fra Den Norske Kirkeprovis til Pavestolen 1438–1531* (Stavanger: Misjonhogskolens Forlag, 2004) (henceforth: Jørgensen and Saletnich, *Synder og Pavemakt*).

³³ See *Diplomatarium Norvegicum* V, n. 268, VI, n. 234, 516, VII, n. 230, 627 (henceforth: *Dipl. Norv.*).

³⁴ Item de absolvendo jniectores manuum violentarum in clericorum [personas] citra mortem uel mutilacionem ad vitam ipsius. E., The initial E[neas] refers to the Christian name of Pope Pius II, and was the normal way for papal signatures. *Dipl. Norv.* XVII, n. 635.

should not put too much weight on this considering the general scarcity of the material. From the registered petitions in the Apostolic Penitentiary we know that Norwegian people, also during Olav's archiepiscopate 1458-74, did send supplications to the pope concerning cases of killing and violence against the clergy.³⁵ In the authorisation of Olav Trondsson we also find a direct reference to a confessional letter for Queen Dorothea registered among the penitentiary texts.³⁶ Another example of delegated power is an authorisation of 1405 by Pope Innocent VII for his nuntius to the Nordic countries, Nicolaus of Sipontum, to dispense 20 cases of matrimony in the third and fourth degrees of consanguinity and affinity – *ignorantes et scientes* – with absolution for cases already contracted, 60 cases of *defectus aetatis*, 30 cases of *defectus corporis* and 50 cases of *defectus natalium*.³⁷

Sometimes we learn about the delegated authority only by the help of indirect references. In 1506, Abbot Olav Petersson received a letter from the pope with an indirect confirmation that the bishop of Bergen, Hans Teiste (1474-1506), had been given the authority to dispense in *defectus natalium* cases. Thirteen years earlier Olav had himself received such dispensation from Bishop Hans.³⁸ Afterwards he had been elected abbot at Halsnøy Abbey of the Augustinian order, but since he had kept quiet about his *defectus* in connection with the election he feared that the election could be invalid. The supplication is forwarded *pro parte devoti oratoris* and *exposito devote creature vestre Tituli sancti Marcelli presbitero Cardinali sanctitatis vestre maiori penitenciaro*. It was granted with the ordinary formular: *Concessum ut petitur in presentia domini nostri pape. G. Cardinalis sancti Petri ad vincula*.

Another interesting case shows that supplicants with a granted papal dispensation in their hands did not always experience smooth contact with the local church authorities. In 1476, two couples in the diocese of Skaalholt in Iceland received papal dispensation, in both cases for the fourth degree of consanguinity.³⁹ But the local bishop refused to effectuate the papal decision, which resulted in a sharp rebuke against

³⁵ ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 8, fol. 184r; vol. 9, fol. 178r; vol. 15, fol. 86v; vol. 18, fol. 183v; vol. 21 fol. 101v. These documents are edited in Jørgensen and Saletnich, *Synder og Pavemakt*, n. 6, 42, 44, 47, 48.

³⁶ ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 9, fol. 384r. This document is edited in Jørgensen and Saletnich, *Synder og Pavemakt*, n. 1.

³⁷ ASV, *Reg. Vat.* vol. 333, fol. 333r-374r. NGL II, 1, n. 175. For other cases see *Dipl. Norv.* XVII, n. 232 (marriage, defects of birth and body, choice of confessor, portable altar), VI, n. 574 (choice of confessor), XVII, n. 129, 197 (food).

³⁸ ... *quod cum alias ipse orator cuperet ad omnes etiam sacros et presbiteratus ordines promoveri pro ordinibus huiusmodi suscipiendis, eius ordinarium accessit et eum super defectu natalium quem patitur de presbitero genitus et soluta consuluit, qui eundem oratorem non obstante huiusmodi natalium defectu asserens ad hoc sufficientem habere facultatem ad ordines huiusmodi alias tamen rite promovit...* (ASV, *Reg. Suppl.* vol. 1239, fol. 77v., *Dipl. Norv.* XVII, n. 795, 796).

³⁹ ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 25, fol. 13v. These documents are edited in Jørgensen and Saletnich, *Synder og Pavemakt*, n. 91, 92.

the bishop from the Papal Penitentiary, with the threat of excommunication in case the order was not carried out.⁴⁰ What the reason behind the bishop's reluctance was, we can only speculate, but from Iceland we also have some cases of a similar kind from around the year 1500. At least we know that an ongoing conflict between the bishop and a group of leading priests was an ingredient in the case since these priests were the ones to fight the bishop's refusal.⁴¹

We also have a few examples of priests trying marriage cases against canon law rules, that is, exercising their right to pass verdict in such cases. Thus, in 1502, a case was reported, again from Iceland, of twelve priests declaring the marriage between Dadi Arasson and Tora Torarinsdotter invalid, with express reference to the authority bestowed upon them according to *Compositio Tunsbergensis*.⁴² In Iceland, thus, it seems that there was a formal practice of trying the validity of marriages on the point of the relationship between the two parties before the official contracting of the marriage.⁴³ In cases of invalidity, the result of the trial represented a pre-stage to the advancing of the supplication to the papal penitentiary.

If we look at the concrete Norwegian material treated by the Apostolic Penitentiary against the actual statutes of canon law, the following two cases can serve as illustrative examples. The former example is taken from Skálholt diocese in Iceland from the year 1472:

The layman Þorleifur Björnsson and the woman Ingveldur Helgadóttir, a couple from Skálholt diocese, wish to contract marriage, but are related in the fourth degree of consanguinity. Despite their being aware of this impediment they have been carnally together in an unlawful and incestuous manner and produced offspring. They now ask to be absolved from this kind of fornication and incest and to receive a dispensation, so that despite this impediment they can contract marriage, with legitimation of their offspring.

Granted by special grace, Antonius, bishop of Luni-Sarzana, regent.

Rome at St. Peter, June 28 1472.⁴⁴

A decade later, on the 14th of August, 1481, the Penitentiary issued its decision on the supplication of a couple from Nidaros diocese on the Norwegian mainland. The text goes as follows:

Nikolas Andreasson, layman, and the woman, Solva, from Nidaros diocese ask for a dispensation for their contracted and already consummated marriage, and

⁴⁰ NGL 2. Række, II, 557.

⁴¹ *Dipl. Isl.* VII, n. 497.

⁴² *Dipl. Isl.* VI, n. 638; VII, n. 577.

⁴³ In 1492, twelve priests issued a declaration saying that all who intended to contract marriages must prove by witnesses that the marriage was legal according to Canon Law.

⁴⁴ ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 20, fol. 67r. The document is edited in Jørgensen and Saletnich, *Synder og Pavemaket*, n. 88.

for their offspring being unaware that they were related in the third and fourth degrees by the fact that a woman, whom Nikolas had known carnally, was related with the mentioned Solva in the third and fourth degrees of consanguinity, with the legitimization of received and expected offspring, by special grace.⁴⁵ Granted by special grace, Julianus, bishop of Bertinoro, regent, and with special letter of declaration regarding third and fourth degrees.

Granted, Julianus. Rome at St. Peter, August 14, 1481.

If we look at the last of the official compilations of decretals predating these supplications, namely the *Clementinae* of 1317, we find the following provision:

We declare that those dissuaded by fear of the divine precept, Lev. 18:20, who do not hesitate to contract matrimony knowingly, at the peril of their souls, within the degrees of consanguinity and affinity interdicted by canonical enactment are subject to the sentence of excommunication by their very act. This also applies to nuns and clerics in Holy Orders who contract marriage. We do this to restrain such reckless behaviour by fear of punishment. The prelates of churches are ordered to announce publicly that all those who have contracted such marriages are excommunicated until such time as they humbly recognise their error, separate from each other, and show themselves worthy of receiving the grace of absolution.⁴⁶

The main point stressed in this text relates to the act of knowingly contracting marriage against the regulations of canon law on forbidden degrees of consanguinity and affinity. In such cases the culprits had to face excommunication “by their very act”. As for the two mentioned couples from Skálholt and Nidaros, only the former falls within this provision. Both Þorleifur and Ingvaldur belonged to the very highest ranks of the Icelandic aristocracy.⁴⁷ It would therefore have been unthinkable for them to lead a public life against canonical enactment jeopardising, among other matters, their children’s right of inheritance. Consequently their supplication contains a petition for absolution.⁴⁸

In the case of Nikolas and Solva, we find no act of having knowingly violated canon regulations of forbidden degrees. Their marriage seems to have been lawfully contracted, and the sexual relation between Nikolas and a female relative of Solva had been committed unknowingly as far as the relationship between the two women was concerned. Since no deliberate sin had been committed on this point their supplication

⁴⁵ ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 30, fol. 125r. The document is edited in Jørgensen and Saletnich, *Synder og Pavemakt*, n. 19.

⁴⁶ Tit. I, C. 1.

⁴⁷ Þorleifur held the office of hirðstjóri, i.e. regent. *Íslenzkær Æviskerár*, V, 174, *Dipl. Isl.* V, 1086.

⁴⁸ Not until 1478 did Archbishop Gaute Ivarsson declare, on the basis of the papal dispensation, the permission for Þorleifur and Ingvaldur to lawfully contract their marriage. The letter from the archbishop also contains an instruction for the Skálholt bishop to call the couple for confession and to impose penance. NGL 2. Række, II, 541.

to the Penitentiary contains only a petition for a dispensation. The fact that Nikolas had committed adultery was, of course, a sinful act. But this did not belong to the reserved papal cases, and was to be solved by Nikolas with his confessor.

CONCLUSIVE REMARKS

In this article we have cast a glance at some lines of the impact of canon law on Norwegian legislation from the high Middle Ages until the Reformation. We have seen that the ecclesiastical law codes that permeated all Western Christendom during this epoch, also made themselves felt in the peripheral and northernmost province of the Roman church, that is, the archdiocese of Nidaros, which included Norway, Iceland and some of the North Atlantic islands. One of the main issues at stake was drawing a demarcation line between ecclesiastical and civil jurisdiction. In the fifteenth century both official documents such as joint decrees from civil authorities and the Church and more personal texts such as the penitentiary supplications seem to indicate that rather standardised procedures were in force for the treatment of different kinds of cases. At the same time, different sorts of local circumstances varied this general picture by putting their own imprint on actual cases. We have exemplified this by two marriage cases from Iceland and Norway. A more detailed examination of the treatment of other causes reserved for the pope against the relevant regulations of canon law would certainly be a most interesting task in order to see whether the same patterns also apply to other matters. But such a search would go beyond the confines of this article.

MARRIAGE AND SEXUAL CONDUCT



ILLEGITIMATE SCOTS IN THE REGISTERS OF SUPPLICATIONS
AND THE REGISTERS OF THE APOSTOLIC PENITENTIARY
DURING THE PONTIFICATE OF SIXTUS IV (1471–1484)

Jennifer R. McDonald

Despite distance and expense, Scottish clerics advanced thousands of supplications to the offices of the Apostolic Chancery, Datary, and Penitentiary during the Middle Ages. Their petitions, which concern a disparate variety of matters, constitute a significant addition to the sources available for the study of the medieval church in Scotland. The absence of native sources, including ordination rolls and episcopal registers, has hampered scholarly efforts to address subjects such as clerical recruitment, training and ordination. Supplications preserved in the respective registers of these offices offer insight into these issues. They also demonstrate the reception of canon law, and its application in practice, in the medieval kingdom, as well as serve to highlight contacts between Scotland and the Holy See.

Great efforts have been made to analyse Scottish supplications to the papal curia. For the most part, studies have been based on material in the Registers of Supplications, which contain supplications granted by the Chancery and, from the fifteenth century onwards by the Datary.¹ While useful, these present only a partial view of

¹ See, for example, A. D. M. Barrell, *The Papacy, Scotland and Northern England, 1342–1378* (Cambridge: Cambridge University Press, 1995); Eila Williamson, “Scottish Benefices and Clergy during the Pontificate of Sixtus IV (1471–1484): the evidence in the *Registra Supplicationum*,” 2 vols. (University of Glasgow, unpublished PhD thesis, 1998) (henceforth: Williamson, *Scottish Benefices*); Annie I. Cameron, *The Apostolic Camera and Scottish Benefices, 1418–1488* (London: Oxford University Press, 1934); D. E. R. Watt, *Fasti Ecclesiae Scotticae Medii Aevi ad annum 1638* (Edinburgh: Scottish Record Society, 2003) (henceforth, *Fasti*); *idem*, *A Biographical Dictionary of Scottish Graduates to A. D. 1410* (Oxford: Clarendon Press, 1977); Ian B. Cowan, *The Parishes of Medieval Scotland* (Edinburgh: Scottish Record Society, 1967); Leslie Macfarlane, “The Primacy of the Scottish Church, 1472–1521,” *Innes Review* 20 (1969), 111–129; *idem*, “The Elevation of the Diocese of Glasgow into an archbishopric in 1492,” *Innes Review* 43 (1992), 99–118; J. A. F. Thompson, “Innocent VIII and the Scottish Church,” *Innes Review* 19 (1968), 23–31; *idem*, “Some New Light on the Elevation of Patrick Graham,” *Scottish History Review* 40 (1961), 83–88; D. E. R. Watt, “The Papacy and Scotland in the Fifteenth Century,” in *The Church, Politics, and Patronage in the Fifteenth Century*,

supplications submitted to the papal authority by Scots. This partiality is especially true of supplications submitted by clerics. Clerical petitions in the Registers of Supplications are primarily concerned with requests for collation to and disputes over benefices. Those in the Penitentiary registers, by contrast, are concerned principally with requests for grace from impediments and/or violations of canon law. Moreover, while the Registers of Supplications provide information regarding ecclesiastical careers and the operation of the Scottish church, most supplications concern clerics who had already been ordained. Penitentiary supplications, on the other hand, provide a wealth of information regarding men who desired to enter the clergy.

To date, there have been no attempts to compare the Scottish supplications found in the Registers of Supplications with those in the Penitentiary registers. Analytical comparison of these supplications would prove fruitful. Such an approach would provide a more complete view of the types of supplications that Scottish clerics advanced to the late medieval papal curia. It would also serve to highlight the noticeable distinctions which exist between supplicants in the respective registers. Supplicants in the Registers of Supplications, for the most part, constitute the elite of the Scottish ecclesiastical hierarchy. Many had been awarded university qualifications, and many subsequently attained lucrative preferment or emoluments subsequent to receiving dispensation from either the Chancery or the Datary. Those in the Penitentiary registers, by contrast, constitute the rank and file of the parish clergy.² Few are known to have possessed university qualifications, and most cannot be traced to promoted post either before or after receiving grace from the Penitentiary.

This contrast can be exemplified particularly through analysis of illegitimate clerics in these registers. Supplications dispatched during the pontificate of Sixtus IV will be used as a case study.³ Between 1471 and 1484, 874 Scottish clerics applied to the Datary and Penitentiary for grace. The Datary handled the requests of 600 supplicants,

ed. R.B. Dobson (Gloucester: Sutton, 1984), 115-132; Norman Macdougall, "The Struggle for the Priory of Coldingham, 1472-1488," *Innes Review* 23 (1972), 102-114; *idem* (ed.), *Church, Politics and Society: Scotland, 1408-1929* (Edinburgh: Donald, 1983); Mark Dilworth, "Coldingham Priory and the Reformation: Notes on Monks and Priors," *Innes Review* 23 (1972), 115-137; *idem*, "The Social Origins of Scottish Medieval Monks," *Records of the Scottish Church History Society* 20 (1980), 197-209; Ian B. Cowan, "The Religious and the Cure of Souls in Medieval Scotland," *Records of the Scottish Church History Society* 14 (1962), 215-230. See other articles listed by Ian B. Cowan, "The Medieval Church in Scotland: A Select Critical Bibliography," *Records of the Scottish Church History Society* 21 (1983), 91-111; *idem*, *The Medieval Church in Scotland* (Edinburgh: Scottish Academic Press, 1995).

² See the discussion in Jennifer McDonald, "The Papal Penitentiary and Ecclesiastical Careers: The Requests of Scottish Clergy in the Registers of the *Sacra Penitenzzeria Apostolica*, 1449-1542" (University of Aberdeen, unpublished PhD thesis, 2005), 44-76.

³ I have chosen the pontificate of Sixtus IV as a case study because extensive research has been published on supplications granted by the Datary during this period, thus facilitating comparisons. For further details, see Williamson, *Scottish Benefices*.

while the Penitentiary granted graces for 274 petitioners. In total, 281 supplicants applied to these offices for dispensation from illegitimacy. 61 were dispensed by the Datary. This group included 35 supplicants who identified themselves as priests, 14 clerks in minor orders, nine scholars, two regular canons, and one lone monk, John Finlay, who was professed at Beaulieu (diocese of Ross, O.Vall.).⁴ In all, 220 illegitimate Scots were dispensed by the Penitentiary.⁵ Among this group of supplicants were 124 who identified themselves as scholars,⁶ 61 clerks in minor orders, 12 priests, eight acolytes, four monks, three regular canons, three whose status was not indicated, and one nun, Anna Donaldson, who was professed at Iona (diocese of Sodor, OSB).⁷

The Datary and the Penitentiary possessed a similar faculty to dispense illegitimate supplicants, who could apply for one (or in some instances two) of three types of dispensation from the birth stigma. The first, described as the *de defectu natalium* dispensation, permitted recipients to be ordained to major orders and to obtain one benefice with pastoral care.⁸ Schmugge's analysis of illegitimate supplicants in the Penitentiary registers has shown that, in general, recipients of this type of dispensation had not yet begun an ecclesiastical career, most describing themselves as scholars or clerks in minor orders. Recipients of the *de uberiori* dispensation were permitted to obtain further benefices with pastoral care, and it was generally the case that ordained clergy requested this type of dispensation.⁹ Nevertheless, as Scottish supplications and those from other regions demonstrate, some supplicants had not been ordained to major orders, but still

⁴ ASV, *Reg. Suppl.*, vol. 675, fol. 30v.

⁵ Illegitimacy was overwhelmingly the most common reason for which Scottish clerics applied to the Penitentiary during this period. Besides these supplications, a further 54 were submitted by Scottish clerics during the pontificate of Sixtus IV. 17 were classified *de diversis formis*, and primarily concerned requests for absolution and dispensation from murder or violence; and 17 were classified *de promotis et promovendis*. 15 clerics applied for confession licenses, and their requests were classified *de confessionalibus perpetuis*, while five applied for official declarations from the crime of murder.

⁶ According to Schmugge, the term '*scholaris*' usually identified men who had not yet joined the ranks of clergymen, while the term '*clericus*' normally described a man who had been ordained to minor orders. The term '*scholaris*' was also employed to describe a young boy receiving tuition at a cathedral grammar school as well as a young man matriculated at a university. In Scotland, the term seems to have been used to identify young men training in the grammar schools. See Ludwig Schmugge, *Kirche, Kinder, Karrieren: Päpstliche Dispense von der unehelichen Geburt im Spätmittelalter* (Zurich: Artemis and Winkler, 1995), 123-124 (henceforth: Schmugge, *Kirche, Kinder, Karrieren*). For a discussion of the definition of scholars in a Scottish context, see *Fasti Aberdonensis: Selections from the Records of the University and King's College of Aberdeen, 1494-1854*, ed. C. Innes (Aberdeen: Spalding Club, 1854), iii-lxviii and *Munimenta Almae Universitatis Glasguensis*, ed. C. Innes (Glasgow: Maitland Club, 1854), ii, 56, 65.

⁷ Her supplication is found at ASV, *Penitentiaria. Ap., Reg. Matrim. et Div.*, vol. 33, fol. 261v.

⁸ Schmugge, *Kirche, Kinder, Karrieren*, 161-162.

⁹ *Ibidem*, 154-155, 161-162; Kirsi Salonen, *The Penitentiary as a Well of Grace in the Late Middle Ages: The Example of the Province of Uppsala, 1448-1527*. *Annales Academiae Scientiarum Fennicae* 313 (Saarijärvi: Academia Scientiarum Fennica, 2001), 195-202 (henceforth: Salonen, *The Penitentiary*).

requested *de uberiori* dispensation to hold a subsequent benefice.¹⁰ The third type of dispensation which illegitimate clerics could receive was known as the *ubi pater* dispensation. Recipients of this form of grace, who were always the sons of priests, were permitted to serve at the same church as their fathers.¹¹ During the period under analysis, Scottish clerics did not apply to either the Datary or the Penitentiary for this type of dispensation.

42 (69%) illegitimate Scots applied to the Datary for *de uberiori* dispensation, while 19 (31%) applied for *de defectu natalium* dispensation. A different pattern is noticeable among Scottish requests to the Penitentiary for the same period. Only 17 (8%) Penitentiary supplicants requested *de uberiori* dispensation, the vast majority (203, 92%) applying for dispensation to enter an ecclesiastical career and to hold one benefice *cum cura animarum*. This pattern can perhaps be explained by the wider faculty which the Datary possessed. While both offices possessed similar competence to dispense men from illegitimacy, the Datary could also collate those who had been dispensed to a specific benefice. The Penitentiary did not possess a similar authority. Rather, it only dispensed supplicants so that they could be ordained to major orders and thereby qualify in principal for collation to a benefice with pastoral care.¹² Moreover, the Datary, unlike the Penitentiary, was also authorised to grant expectative graces to supplicants who desired collation to a specific benefice, once it became available.¹³

Given its authority, it is perhaps no surprise that the Datary, rather than the Penitentiary, granted a larger number of requests for *de uberiori* dispensations. Several Datary supplicants, including Andrew Stewart, MA and scholar from St Andrews, applied for this type of dispensation in order to be collated to a specific benefice (in Stewart's case the canonry and prebendary of Killearn, diocese of Glasgow), and 'to hold whatsoever benefices, with the power of exchange as often as he pleases, notwithstanding the said canonry and prebendary.'¹⁴ Such locutions as that noted in Stewart's petition are commonly found among requests to the Datary for the right to hold multiple benefices with the power of exchange. Other supplicants, who did not request collation to a specific benefice, desired to hold any number of benefices (compatible or incompatible) with the power of free exchange. This may explain why their requests for *de uberiori* dispensation were granted by the Datary, rather than the Penitentiary. The latter did not possess the authority to dispense supplicants to hold any number of benefices. The Datary, by contrast, was empowered to dispense supplicants to hold several benefices, compatible or incompatible, with the free power of exchange.

¹⁰ See, for example, ASV, *Penitenzieria. Ap., Reg. Matrim. et Div.*, vol. 4, fol. 68r; ASV, *Reg. Suppl.*, vol. 677, fol. 23.

¹¹ X 1.17.2-9. Schmugge, *Kirche, Kinder, Karrieren*, 162-165.

¹² Salonen, *The Penitentiary*, 196.

¹³ Williamson, *Scottish Benefices*, 168-172.

¹⁴ ASV, *Reg. Suppl.*, vol. 678, fol. 131.

Besides the difference in the pattern of their requests, social, economic and educational distinctions exist between illegitimate Scots in the respective registers. During the period under analysis, 13% of the 61 illegitimate supplicants who received dispensation from the Datary claimed they were the illegitimate sons of noblemen.¹⁵ By contrast, none of the 220 Penitentiary supplicants explicitly indicated noble status, and none can be traced to noble origins. Among the Datary supplicants were the already noted Andrew Stewart (who identified his father as an unmarried baron) and James Moneypenney, a scholar from St Andrews (who identified his father as an unmarried nobleman, and his mother as an unmarried noblewoman).¹⁶ Williamson has noted that it was important that supplicants indicated noble birth in their supplications, as they were more likely to receive higher graces and lucrative emoluments or preferment.¹⁷ Some cynicism should, however, be applied to these claims of noble origins, because, in many cases, noble birth can only be tenuously substantiated. Nevertheless, supplicants would have been ill-advised to lie in their supplications since false claims invalidated the grace granted, while untruthful claims gave rivals an opportunity to challenge the supplicant's claim to a particular office or benefice.

Many illegitimate Datary supplicants are also found in possession of lucrative emoluments, unlike the vast majority of Penitentiary supplicants. The Datary supplicants may have been aided in their quest for benefices by their social connections, for a number are found in the patronage of Pope Sixtus IV and/or high-ranking prelates. None of the Penitentiary supplicants can be shown to have benefited from similar connections. Eight Datary supplicants indicated they were familiars of the pope.¹⁸ Of these eight, four were illegitimate – Andrew Young (Forfar), William Marshall, James Douglas, and John Abernathy, who had also been a familiar of Pope Paul II (1464–1471).¹⁹ It was probably as a result of papal patronage that these supplicants obtained collation to several benefices. John Abernathy, for instance, was provided to the parish church of

¹⁵ For further details of these supplications, see Williamson, *Scottish Benefices*, 137–145.

¹⁶ ASV, *Reg. Suppl.*, vol. 672, fol. 284v (Stewart), vol. 693, fol. 17r (Moneypenney).

¹⁷ Williamson, *Scottish Benefices*, 22.

¹⁸ Papal familiars were members of the pope's household who were entrusted with attending the pope in private matters. The benefits of such positions were primarily financial, earning the beneficiary the right to gain several expectative graces, and exemption from financial obligations to the Chancery. They were also permitted to hold several incompatible benefices, and were not required to be resident to maintain pastoral care. See Williamson, *Scottish Benefices*, 71–77, who does, however, note a distinction between familiars residing at the Roman curia, and those who were permitted to call themselves familiars, who enjoyed similar privileges, but did not reside at the court.

¹⁹ ASV, *Reg. Suppl.*, vol. 742, fol. 271r; vol. 744, fol. 177v; vol. 779, fol. 267r, 275v, 277v; vol. 782, fol. 216r; vol. 800, fol. 183v; vol. 811, fol. 17v; vol. 812, fol. 164v; vol. 815, fol. 320v (Andrew Young); vol. 688, fol. 86r; vol. 700, fol. 178v; vol. 727, fol. 35v, 127v; vol. 728, fol. 47r; vol. 730, fol. 230v (Marshall); *Calendar of Scottish Supplications to Rome*, ed. James Kirk, Roland Tanner and Annie I. Dunlop (Glasgow: Scottish Academic Press, 1997), v, 1428 (henceforth: CSSR v); ASV, *Reg. Suppl.*, vol. 817, fol. 141r (Douglas); CSSR, v, 1428, 1492, 1507; ASV, *Reg. Suppl.*, vol. 737, fol. 207; vol. 758, fol. 180 (Abernathy).

Lassuade (diocese of St Andrews), as well as the parsonage of Tannadice in the same diocese, while William Marshall was provided, among other offices, to the perpetual vicarage of Galston (diocese of Glasgow), the vicarage of Perth (diocese of St Andrews) and the vicarage of Bathgate (diocese of St Andrews).²⁰ Andrew Young benefited most from his papal connections, holding several benefices (some of which were resigned for a pension) in six Scottish dioceses.²¹ Meanwhile, 12 Datary supplicants are found in the patronage of various cardinals.²² Among these supplicants, two were illegitimate – William Marshall and Andrew Young (Forfar). Marshall was a familiar of Pietro Riario, cardinal of San Sisto in 1473, and upon the latter's death in 1474, Marshall became the familiar of Guiliano della Rovere, cardinal of S. Petrus ad Vincas (and the Major Penitentiary between 1476 and 1503, and the future Pope Julius II).²³ Young is also found in the patronage of several cardinals. In 1472, he was noted as the continual commensal familiar of Rodrigo Borgia, cardinal bishop of Albano and papal vice-chancellor (and future Pope Alexander VI). By 1476, Young had acquired the patronage of Girolamo Riario, count of Imola, while a petition granted in 1479 identified him as a continual commensal familiar of Guillaume d'Estouteville, cardinal bishop of Ostia and archbishop of Rouen, who supplicated on his behalf for provision to the parish church of Dunnotar (diocese of St Andrews).²⁴ Young is also found in the patronage of Raffaele Riario, cardinal deacon of San Giorgio, and Giuliano della Rovere.²⁵ Although he is not known to have served in the capacity as a familiar of a cardinal, the noted James Moneypenny benefited from connections to Alan, cardinal bishop of Sabina, who supplicated on Moneypenny's behalf for a *de defectu natalium* dispensation, granted in July 1473.²⁶

Just as none of the Penitentiary supplicants can be shown to have benefited from the patronage of the pope or cardinals, none benefited from the patronage of the Scottish King, James III (1460–1488). However, four Datary supplicants during this

²⁰ ASV, *Reg. Suppl.*, vol. 737, fol. 207; vol. 758, fol. 180 (Abernathy); vol. 688, fol. 86r; vol. 700, fol. 178v; vol. 727, fol. 35v, 127v; vol. 728, fol. 47r; vol. 730, fol. 230v (Marshall).

²¹ ASV, *Reg. Suppl.*, vol. 678, fol. 83v; vol. 742, fol. 271r; vol. 744, fol. 177v; vol. 779, fol. 267r, 275v, 277v; vol. 782, fol. 216r; vol. 800, fol. 183v; vol. 811, fol. 17v; vol. 812, fol. 164v; vol. 815, fol. 320v. For more on Young, see Williamson, *Scottish Benefices*, 106–109.

²² It is not clear as to the exact nature of the role of cardinal familiars. It is known that cardinals did require some of their familiars to fulfill particular duties, though it can not be shown that the twelve Scots who were named as cardinal familiars attained such a high status. See Williamson, *Scottish Benefices*, 94–97.

²³ ASV, *Reg. Suppl.*, vol. 688, fol. 86r; vol. 700, fol. 178v; vol. 727, fol. 35v, 127v; vol. 730, fol. 139r, 230v; vol. 751, fol. 170r, 177r, 251v, 280v; vol. 753, fol. 103v, 171v, 276v; vol. 757, fol. 10r; vol. 758, fol. 121v; vol. 759, fol. 150r.

²⁴ ASV, *Reg. Suppl.*, vol. 786, fol. 271v.

²⁵ ASV, *Reg. Suppl.*, vol. 678, fol. 83v, 112r; vol. 742, fol. 271r; vol. 744, fol. 177v; vol. 786, fol. 271v; vol. 787, fol. 83v; vol. 799, fol. 267r; vol. 802, fol. 8v; vol. 825, fol. 38v; vol. 829, fol. 97v; vol. 832, fol. 7v.

²⁶ ASV, *Reg. Suppl.*, vol. 693, fol. 175r.

period did benefit from their connections to the king, who applied on their behalf for presentation to specific offices or benefices. The already noted William Marshall was, for a time, in the patronage of the king who, in April 1472, applied on Marshall's behalf to receive dispensation to hold two incompatible benefices.²⁷ Marshall subsequently fell out of favour with the king after several attempts to retain the rectory of Forteviot (diocese of St Andrews), an office to which the king desired provision for his *medicus*, John Lyle. For his repeated attempts to claim this benefice, Marshall was branded 'a rebel of the king'.²⁸ Other illegitimate supplicants who benefited from royal patronage included Duncan Bully, who represented the king on several occasions in the curia between May and June 1474. His efforts were rewarded when, in 1480, he was nominated (and subsequently promoted) as archdeacon of Dunblane.²⁹ John Abernathy also had connections to the king, who supplicated on his behalf in 1471, for the right to hold for life any number of compatible benefices (in addition to the parish church of Tanadice) or incompatible benefices with the free power of exchange.³⁰

The illegitimate supplicant who benefited most from royal patronage was William Scheves. In 1474, the king applied on Scheves' behalf for his appointment to the archdeaconry of St Andrews, an office he held between 1474 and 1478.³¹ In 1474, the king also applied to the pope to appoint Scheves as a papal acolyte, and in 1475 he supplicated the pontiff to appoint Scheves to the deanery of Dunkeld.³² In that same year, Scheves was also appointed as co-adjutor of St Andrews, during the excommunication of Patrick Graham, the first archbishop of St Andrews.³³ One year later, Scheves was appointed as metropolitan of the diocese, again at the request of James III. Scheves held the office until his death in 1497.³⁴

Although none of the illegitimate Penitentiary supplicants are known to have possessed noble origins, or can be shown to have maintained connections with either high ranking prelates or the king, four did acquire university qualifications. So too did 18 illegitimate supplicants (out of a total of 151) who received dispensation from the Datary. While noble birth and connections with high ranking prelates or royalty were two means by which a cleric could advance his career and emoluments, university qualifications were also useful. Indeed, in a Scottish context, educational qualifications seem to have played a more important role in advancement than did social connections or

²⁷ *Calender of Entries in the Papal Registers relating to Great Britain and Ireland: Letters to the Pope*, ed. J. A. Twemlow (London: HMSO, 1955), xiii, 236 (henceforth: *CPL*).

²⁸ ASV, *Reg. Suppl.*, vol. 751, fol. 177r; vol. 753, fol. 103v, 171v, 276v.

²⁹ *Fasti*, 118; *CPL*, xiii, 103-104; Williamson, *Scottish Benefices*, 122.

³⁰ *CJSR* v, 456.

³¹ ASV, *Reg. Suppl.*, vol. 704, fol. 111v; vol. 705, fol. 82v.

³² ASV, *Reg. Suppl.*, vol. 706, fol. 254r; vol. 727, fol. 74r.

³³ *Fasti*, 136-137.

³⁴ ASV, *Reg. Suppl.*, vol. 740, fol. 165r. For Scheve's career, see *Fasti*, 136-137, 383-384, 397, 455.

patronage. Watt has noted in his analysis of clerical careers in the fourteenth century that the greater the benefice, the more likely the incumbent was to have acquired a university qualification.³⁵

The degrees acquired by these supplicants were varied. Two Datary supplicants – Andrew Young (Forfar) and John Whitelaw – were Bachelors of Decrees.³⁶ Five illegitimate Datary supplicants – Alexander Stewart, William Elphinstone, Martin Wann, John Fraser and Gavin Waugh – had been awarded a Bachelorate of Decrees and a Master's degree in Arts.³⁷ A further eight supplicants, including the noted William Marshall, Duncan Bully, William Scheves, and John Abernathy, had been awarded the degree of Master of Arts.³⁸ One Datary supplicant, John Liston, indicated that he had been awarded a Masters degree in Theology, while another, John Stewart, indicated he had attained a Licentiate in Arts.³⁹ Of the four Penitentiary supplicants, one, Thomas Lesley, held a Licentiate in Arts from the University of St Andrews, while three – Alexander Wishart, John Henry and David Abercrombie – had been awarded the degree of Master of Arts.⁴⁰ It cannot be shown where Wishart acquired his qualification.⁴¹ Henry is found as a Licentiate in 1480 among Parisian matriculation records though it cannot be shown where he acquired the higher qualification.⁴² Abercrombie was a student of the University of St Andrews where he was awarded a Licentiate in 1477 and a Master's degree in 1480.⁴³

Several of the supplicants noted above are subsequently found in high-ranking offices within the Scottish church. Duncan Bully, as has been noted, became the archdeacon of Dunblane, while Martin Wann was promoted as the chancellor of Glasgow.⁴⁴ Alexander Stewart was appointed to the archdeaconry of Moray, a position he held concurrently with the subchantorship of Moray. In 1478, he became the chancellor of

³⁵ D. E. R. Watt, "University Graduates in Scottish Benefices before 1410," *Records of the Scottish Church History Society* 15 (1964), 77-88.

³⁶ ASV, *Reg. Suppl.*, vol. 678, fol. 112r (Young); vol. 718, fol. 56r (Whitelaw).

³⁷ ASV, *Reg. Suppl.*, vol. 677, fol. 23r (Stewart); vol. 680, fol. 40v (Elphinstone); vol. 688, fol. 296r (Wann); vol. 747, fol. 169r (Fraser); vol. 794, fol. 218v (Waugh).

³⁸ ASV, *Reg. Suppl.*, vol. 727, fol. 35v (Marshall); vol. 704, fol. 54r (Bully); vol. 704, fol. 111v (Scheves); vol. 666, fol. 76v (Abernathy).

³⁹ ASV, *Reg. Suppl.*, vol. 819, fol. 269r (Liston); vol. 686, fol. 128r (Stewart).

⁴⁰ Lesley's request for *de defectu natalium* dispensation is found at ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 33, fol. 254v. He received his degree in 1482. See Annie I. Dunlop, ed., *Acta Facultatis Artium Universitatis Sancti Andree, 1413-1588* (Edinburgh: Scottish History Society, 1964), i, 86-87 (henceforth: Dunlop, *Acta*).

⁴¹ ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 23, fol. 254v.

⁴² Aberdeen University Library, MS 958, fol. 21r. Henry's request for *de defectu natalium* dispensation is found at ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 31, fol. 208r.

⁴³ ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 34, fol. 266v; Dunlop, *Acta*, i, 195, 198, 213.

⁴⁴ *Fasti*, 118 (Bully); *Fasti*, 210 (Wann).

Moray and the precentor of Caithness.⁴⁵ In 1479, John Liston became the provost of St Salvator's College in St Andrews, while Andrew Stewart appears as treasurer of Glasgow in 1488.⁴⁶ In 1489, David Abercrombie was collated as subdean of the diocese of Dunkeld, and sometime thereafter was appointed as commissary general for the whole diocese.⁴⁷

Apart from Scheves, only one other illegitimate Datary supplicant, William Elphinstone, was promoted to the episcopacy. Bishop of Aberdeen from 1483 to 1514, and founder of the city's university (1495), Elphinstone was one of later medieval Scotland's most competent jurists. He was the son of a priest, William Elphinstone, Sr., who was himself a jurist, having studied civil law at Louvain; he was also the first Dean of the Faculty of Arts at the University of Glasgow (1451).⁴⁸ Elphinstone Sr.'s academic and ecclesiastical career no doubt had an influence on the son. Elphinstone Jr. began his journey into the priesthood at the age of seven, when he entered the parochial school at Glasgow to begin his clerical training, which he completed in 1454. In that same year, he was granted dispensation from the defect of birth by the Datary, and was granted a benefice, the revenues from which he presumably used to finance his studies at the University of Glasgow where, in 1462, he was awarded a Bachelorate of Decrees. He went on to study and lecture in canon law at Paris between 1465 and 1470, and until 1471 studied civil law at Orleans. After his return to Scotland, he held several significant positions in the spiritual and temporal sphere. Between 1471 and 1478, he was the official of Glasgow. He was the official of Lothian, and commissary general for St Andrews between 1478 and 1483, and although he was nominated as the bishop of Ross in 1481 he was never consecrated. In addition to his ecclesiastical duties, he was a Lord of the King's Council and served at various parliaments. He also negotiated treaties on behalf of King James III and IV (1488–1513). Shortly before his death in 1514, he was nominated as archbishop of St Andrews, though he died before he could take the appointment.⁴⁹

Scottish illegitimacy supplications in the Registers of Supplications and Penitentiary registers serve to highlight a number of different aspects of clerical life in later medieval Scotland. What they demonstrate, in particular, is that illegitimacy was an impediment that was easily overcome. The stream of illegitimacy supplications to the Penitentiary especially – 1102 were granted between 1449 and 1542 – suggests that the

⁴⁵ *Fasti*, 27, 87.

⁴⁶ *Fasti*, 500 (Liston), 214–215 (Stewart).

⁴⁷ *Rentale Dunkeldense*, ed. R. Hannay (Edinburgh: Scottish History Society, 1915), 304, 324, 338; *Fasti*, 152, 161–163.

⁴⁸ For more details of Elphinstone Sr.'s career, see Leslie J. Macfarlane, *William Elphinstone and the Kingdom of Scotland, 1431–1514* (Aberdeen: Aberdeen University Press, 1995), 16–20 (henceforth: Macfarlane, *Elphinstone*).

⁴⁹ On Elphinstone's career, see *Fasti*, 4, 48, 113, 230, 245; Macfarlane, *Elphinstone*, 16–123.

Scottish church regularly recruited illegitimate candidates into the clergy. But it becomes clear when comparing supplicants in these registers that an illegitimate candidate was more likely to receive lucrative preferment, and even a bishopric or archbishopric, if he obtained university qualifications, and possessed connections to royalty, nobility, or high-ranking prelates. As noted, supplicants who received grace from the Datary constitute the clerical elite in later medieval Scotland, while those in the Penitentiary registers seem to have represented the rank and file of the parish clergy. Most are not traced to promoted post or lucrative emoluments, and most did not receive training other than that given at the grammar schools throughout Scotland. As a result, the vast majority of Penitentiary supplicants cannot be traced through other sources, as can many supplicants in the Register of Supplications. It is, therefore, thanks to the Penitentiary registers that many of these supplicants have been saved from relative obscurity.

In many ways, the differences that exist between illegitimate Scots in the respective register series preserved in the Vatican Secret Archives may also perhaps be a result of the ways in which supplications were distributed once they were received in the *curia*. Given the noble origins, and positions as papal or cardinal familiars which several illegitimate Scots maintained, and given that several supplicants desired collation to specific benefices, or to obtain several incompatible benefices, it is perhaps no surprise that their supplications were given to the Datary for consideration, rather than to the Penitentiary. Noble clerics were also more likely to have received grace from the Datary, rather than the Penitentiary. Moreover, higher fees were charged by the Datary, as opposed to the Penitentiary, which Tamburini has described as the pauper's court. Nevertheless, the differences between Scots in the respective registers are striking, and only through further comparisons can these distinctions be fully highlighted.

DIEMUNDA AND HEINRICH – MARRIED OR NOT?
ABOUT A MARRIAGE LITIGATION IN THE CONSISTORIAL COURT
OF FREISING IN THE LATE MIDDLE AGES¹

Kirsi Salonen

The records of the Apostolic Penitentiary, kept in the Vatican Secret Archives, contain one entry concerning a German couple, Henricus de Empach and Dienia (or correctly, Diemunda²) de Empach, both from the diocese of Freising:³

*Henricus de Empach et Dienia de Empach mulier Frisingensis diocesis ignoranter matrimonium inter se in 3^o et 4^o consanguinitatis gradu contraxerunt et consumarunt. Petunt igitur secum dispensari ut in eorum matrimonio libere remanere possint cum legitimatione prolis. Fiat de speciali, Phi. S. Laurentii in Lucina. Et concedantur eisdem littere declaratorie super 3^o consanguinitatis gradu. Fiat, Phi.*⁴

¹ I wish to thank Ludwig Schmugge for reading my manuscript and suggesting helpful comments and corrections as well as the Academy of Finland that, through financing the research project *The Papal Penitentiary and the Local Church in the Late Middle Ages*, has also helped in preparing this article. Moreover, I would like to express my gratitude to the staff of the Bayerisches Hauptstaatsarchiv in München.

² There are quite often small errors in spelling of non-Latin personal and family names among the Penitentiary entries. This is due to the Latin-speaking scribes who could not understand the German, Scandinavian or English names correctly and sometimes tried to make them sound familiarly Latin. About the misspelling of names, see for example, Kirsi Salonen, *The Penitentiary as a Well of Grace in the Late Middle Ages. The Example of the Province of Uppsala 1448–1527*. Suomalaisen Tiedeakatemian Toimituksia – Annales Accademiae Scientiarum Fennicae, 313 (Saarijärvi: Academia Scientiarum Fennica, 2001) (henceforth: Salonen, *The Penitentiary*), 22–23.

³ ASV, *Penitentiaria Ap., Reg. Matrim. et Div.*, vol. 9, fol. 27r. A summary of the case is also published in *Repertorium Poenitentiariae Germanicum IV. Verzeichnis der in den Supplikenregistern der Pönitentiare Pius' II. vorkommenden Personen, Kirchen und Orte des Deutschen Reiches 1458–1464*. Text bearbeitet von Ludwig Schmugge mit Patrick Hersperger und Béatrice Wiggerhauser. Indices bearbeitet von Hildegard Schneider-Schmugge und Ludwig Schmugge (Tübingen: Niemayer, 1996), case number 408.

⁴ Henricus of Empach and Dienia of Empach, a woman from the diocese of Freising, were married in ignorance of the existence of the 3rd and 4th degrees of consanguinity between them and consummated their marriage. They ask for a dispensation so that they could remain freely in their marriage and for a legitimisation for their children. So be it by the special faculties, Philippus [cardinal of] S. Laurentii in Lucina. And a declaratory letter over 3rd degree of consanguinity is to be given to them. So be it, Philippus.

As this entry testifies, on the 17th of March 1461 (*16. kal. aprilis anno 3 Pii pape II*) the head of the Apostolic Penitentiary, Philippus Calandrini, cardinal of the church of S. Laurentii in Lucina in Rome, agreed to the petition of the couple and granted them the requested grace with his *Fiat de speciali*.

According to the narration in the document, Henricus and Diemunda had married not knowing that there was a marital impediment – that of 3rd and 4th degree of consanguinity – between them. As the regulations of canon law stipulated that such an impediment made a marriage invalid, they were obliged to ask for a dispensation from the Apostolic Penitentiary that would allow them to continue legally in their marriage despite the bond of consanguinity. They also asked for an official legitimisation for their children, often a necessary precaution for later inheritance matters.

Such dispensations are very common among the entries in the registers of the Penitentiary, and thus there seems to be nothing special in the petition of Diemunda and Heinrich.⁵ Their case is, however, extremely interesting, for the short entry that can be found among the records of the Apostolic Penitentiary tells only a very small part (and in a slightly erroneous way) of the story of these two persons. When we combine the information in this short entry with all details that are preserved among the records of the consistorial acts of the chapter of the diocese of Freising, now kept in the State Archives of Bavaria, we can trace the whole and real story behind this very innocent-looking and common type of marriage dispensation among the records of the Penitentiary.

This article has two main purposes: Firstly, it aims to show how much more information local source material can bring to the single cases recorded in the Penitentiary

⁵ The Penitentiary mainly granted two kinds of graces in marriage matters. Firstly, it could grant dispensations for couples who wanted to be legally married despite a connection by a marital impediment that according to canon law forbade them to be married (or who already had been married in ignorance of an impediment between them). Consanguinity, affinity and spiritual relationship were the most common of these impediments. Secondly, the Penitentiary could grant dispensations and absolutions for couples who had already married even though they were aware that there was an impediment between them. As a third, but very rarely used, faculty the Penitentiary could declare an annulment of a marriage if it had been contracted in circumstances that were not consented by the regulations of canon law – for example, cases when one of the spouses had been forced to marry. For more about the marriage petitions handled by the Penitentiary, see Ludwig Schmugge – Patrick Hersperger – Béatrice Wigenhauser, *Die Supplikenregister der Päpstlichen Pönitentiarie aus der Zeit Pius' II. (1458–1464)*, Bibliothek des Deutschen Historischen Instituts in Rom 84 (Tübingen: Niemeyer, 1996), 68–95; Salonen, *The Penitentiary*, 103–119.

During the pontificate of Pius II the Papal Penitentiary granted altogether more than 15,700 graces to Christians who turned to it with their petitions. Of these, 28% (4195 cases) were petitions for a dispensation and/or an absolution in marriage matters. 1503 (36%) of the 4195 marriage petitions were similar kind of dispensations for couples who had married each other in ignorance of an impediment between them. See, for example: Kirsi Salonen, “The Penitentiary under Pope Pius II. The Supplications and Their Provenience,” in *The Long Arm of Papal Authority. Late Medieval Christian Peripheries and Their Communication with the Holy See*. 2nd ed. (Budapest: CEU Press, 2005), 11–21, esp. 14–16.

registers. Secondly, examining the very complicated case of Diemunda and Heinrich renders it possible to observe how well late medieval couples were aware of the marriage regulations of canon law and how they could also very cleverly use and abuse these rules.

THE CASE OF DIEMUNDA AND HEINRICH

ACCORDING TO THE RECORDS OF THE CONSISTORIAL COURT OF FREISING

The picture of the case of Diemunda and Heinrich in the local ecclesiastical court records is very different from that found in the entry among the Penitentiary records. According to the *Liber actorum concistorii capituli Frisingensis* from the year 1462,⁶ on the 15th of January a woman called Diemunda, daughter of Heinrich Moser from Estern-dorff, turned to the authority of the consistorial court of Freising asking justice in her case against Heinrich, brother of Johannes Pawr, who did not want to marry her despite his promises. Their process of litigation went ahead for some months, until the 2nd of April, when the definitive sentence was finally pronounced.⁷

According to the first entry concerning the couple among the court records,⁸ Diemunda turned to the ecclesiastical court in order to get her (ex-)fiancé Heinrich to marry her. The entry in the court records testifies what she stated to the court. According to her testimony, she had been (before meeting Heinrich) an honest virgin serving in the house of Johannes Pawr, the brother of Heinrich. The couple had learned to know each other when she was in service and Heinrich had begun to insist on sleeping with her. She had at first refused and explained that as an honest virgin she could not sleep with him if he did not promise to marry her. After some vain attempts Heinrich understood that promising to marry her was the only way to her bed, and thus he agreed to do this. They then exchanged mutual words of consent which, according to law, meant that they were legally married to each other.⁹ The mutual consent made her think that

⁶ Munich, Bayerisches Hauptstaatsarchiv, HL Freising, 93.

⁷ It was not very common that marriage litigations lasted for such a long time. Sometimes, marriage suits were settled in only one court session. About the Freising cases in 1462, see Bayerisches Hauptstaatsarchiv, HL Freising, 93, *passim*.

⁸ Munich, Bayerisches Hauptstaatsarchiv, HL Freising, 93, fol. 12r: ... *dixit quo alius reus pro eadem bonisavit et pro copula carnali insisterit, que honesta virgo restitit nolite illius assentire nisi eidem matrimonium promitteret. Qui videns quod eam aliter vincere non possit, eidem matrimonio per verba legitime de presenti promisit et ipsa viceversa. Quo matrimonio contracto partes matrimonium carnali copula consumarunt. Reusque eam virginali honore destituit et impregnavit eidemque in puerperio et educando puerum per xi septimanas quibus puer vixit in una metreta tritici et non in plure subvenit et reus huiusmodi contractum in ipsius et aliorum presencia pluriter confessi et dixit impedimentum esse inter eam et se et rogat de super dispensationem obtineri quam ad modum obtenta est.*

⁹ According to canon law a marriage was valid when both parties had consented at the moment of contracting it. The subsequent consummation of the marriage made the tie even stronger. X 4.1.9: *Si vir et mulier invicem promittunt, quod ab eo tempore se pro coniugibus habebunt, contractum est matrimonium de praesenti. H.d.*

now they were husband and wife and she agreed to sleep with him, after which he took her virginity and made her pregnant. She gave birth to a son who, unfortunately, died after eleven weeks, during which Heinrich only contributed to the child care costs with one measure of grain (*metreta tritici*). Diemunda added to her statement that during and after this time Heinrich had confessed in the presence of several persons that they were related to each other in a prohibited way and thus could not get married without a papal dispensation, which they also received. Consequently, she then asked the court to make a decision that Heinrich was obliged to marry her.

This was the testimony of Diemunda recorded in the court book. Immediately below Diemunda's accusation one finds the record of Heinrich's counter-statement, in which he admitted under oath that they had slept together, that they had had a child and that he contributed only one measure of grain to the child care costs during eight weeks. He also stated that they were related to each other in the fourth degree of consanguinity. But he denied that he had promised to marry her or that he had taken her virginity.¹⁰

Thus, the first session at court was quite short. The claims of Diemunda were confirmed as well as the counter-arguments of Heinrich. This was a very common way of acting: The first court session one recorded the accusation of the actor and the answers of the respondent, if he (or she) was present before the court.

Twelve days later the court returned to the litigation between Diemunda and Heinrich. In the session of the 27th of January 1462 the court tried to confirm her accusations with eleven proofs. She stated:

1. that she had been an honest virgin who has served in the house of Heinrich's brother since 1459;
2. that, around Easter of 1459, Heinrich began to insist that she should sleep with him, but she refused saying that she, as an honest virgin, did not want to do anything like that before he had promised to marry her;
3. that, as Heinrich could not find any other way to her bed, he had, around Easter, promised to marry her, and she made the same promise to him;
4. that she believed that Heinrich was honest in what he had said and, therefore, agreed to sleep with him the following night in the house of Johannes Pawr, after which she discovered that she was pregnant;

et est casus notabilis. The constitution is edited in Aemilius Friedberg, *Corpus Iuris Canonici, Pars secunda – Decretalium Collectiones* (Graz: Akademische Druck- u. Verlagsanstalt, 1959), col. 663-664 (henceforth: Friedberg II). About marriage in the Middle Ages, see also James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987) (henceforth: Brundage, *Law, Sex*).

¹⁰ Munich, Bayerisches Hauptstaatsarchiv, HL Freising, 93, fol. 12r: ... *fatetur copulam et pueris procreationem, fatetur etiam quod actrice puerperio et per educando puerum per octo septimanas quibus vixit in una metreta tertia et non in plurimur subvenit et dixit quod per actis sit consanguinea sua in 4^o gradu. Promissionem vero intentionem confessionem deflorationem et alia posita contenta negat.*

5. that he made her pregnant and she give birth to a boy called Leonard. During the eleven weeks that the boy lived Heinrich participated in taking care of the boy and in some of the child care costs;
6. that she believed all the time that Heinrich was acting like an honorable man;
7. that, around Palm Sunday of 1460, Heinrich said, at the house of a certain Paulus Federkil, in the presence of the local priest, that there was an impediment between him and Diemunda that made it impossible for them to be married, but that he would very much like to marry her if only it were possible;
8. that Heinrich said in her presence that he would like to get a dispensation from their impediment, which they also asked for and which was granted on the 17th of March 1461;
9. that he had often slept with her, even on the day of the Visitation of the Virgin and on St. James day, 1460, and that she had considered him as her legal husband;
10. that they had lived like a married couple and that Heinrich had the permission to come to her parents' house as he wanted;
11. that all this was publicly known.¹¹

After hearing Diemunda's statements, the court stated that Heinrich had to give his own testimony against these accusations within eight days time. These were the proceedings of the second court session in the marriage litigation between Diemunda and Heinrich.

Before the stated eight day's time had elapsed, Diemunda made her next move in the case. An entry at the beginning of the court records shows that on the 3rd of February, 1462, Diemunda had decided that she needed legal help in her case against Heinrich and appointed Magister Georius Newburger as her proctor in the litigation. This shows that at the first two hearings she had perhaps acted on her own (or more probably with the help of her relatives), without any professional legal help. Then she may have understood that the litigation would be quite difficult and decided to use the services of an experienced man.¹²

On the same day, the court continued handling the litigation between Diemunda and Heinrich. The court started by giving the floor to Heinrich, who was supposed to answer the eleven points of accusation that Diemunda had presented the last time. In

¹¹ Munich, Bayerisches Hauptstaatsarchiv, HL Freising, 93, fol. 22r.

¹² *Ibidem*, fol. 2r-9r, contain a section where all proctor appointments are recorded. Diemunda's name can be found on fol. 3r. All court records contain a similar kind of section for proctor appointments. As the appointments for a proctor are much less numerous than the cases handled, only a small number of litigants used the help of legal experts when they presented their cases. In register 93, there are altogether 131 proctor appointments recorded. In 50 cases the appointed proctor was the same who also worked for Diemunda: Magister Georius Newburger.

the court registers we find his replies registered after each statement of Diemunda. As can be seen from Heinrich's answers presented below, his and Diemunda's points of views were very different from each other:

1. He admits that Diemunda had been in service of his brother, but otherwise he denies what she states;
2. he does not believe;¹³
3. he does not believe;
4. he admits sleeping with her and getting her pregnant, but denies the rest;
5. he admits having the child and giving some kind of help;
6. he does not believe;
7. he does not believe;
8. he does not believe;
9. he admits to sleeping with her;
10. he does not believe.¹⁴

The court session did not end here. Diemunda brought before the court three witnesses who would confirm that what she stated last time was true. The court agreed to listen to all of them. These witnesses of Diemunda also had to answer the eleven points of Diemunda, one by one.

Her first witness was Sigismund Pseubert, a thirty-year-old priest. His answers were the following: To Diemunda's first statement he replied that he had known her for four years and that he had never heard about her being with someone. To the second statement of Diemunda he answered that he did not know. To the third and fourth points he also commented that he did not know. To the fifth statement he said that she had a child together with Heinrich. To the sixth point he said that Heinrich had uttered in the presence of many persons, but not of Diemunda, that if there were no impediment between them he would like to marry her, and that they could get a dispensation from Freising or from Rome. To the seventh, eighth and ninth points he commented that he did not know. To Diemunda's tenth statement he said that he had often seen the couple visiting church or other public places together, just like any married couple and

¹³ The statement that "he does not believe" (*non credit*) at first seems to be very strange. Why did the respondent claim that he did not know when there was a question about something that he surely was aware of? The reason for using this kind of expression probably depends on the fact that he did not want to agree to Diemunda's statements, for this would have meant in the worst case getting himself into trouble. But if he did not want to agree with Diemunda's statements, why didn't he simply deny the whole thing? The answer for this question is probably the fact that he gave his testimony under oath and he had to answer something to each of Diemunda's statements. If he had knowingly made a false deposition under oath saying that Diemunda's statement was wrong, he would have committed perjury. Thus, not believing was a safe way of trying to contest Diemunda's (correct?) claims.

¹⁴ Munich, Bayerisches Hauptstaatsarchiv, HL Freising, 93, fol. 22r.

that, when he greeted them and called them a married couple, they had thanked him and added that many people thought that they were legally married.¹⁵

Diemunda's second witness was a fifty-year-old layman called Friedrich Heldt of Preming. To the first statement of Diemunda he answered that she had been a virgin and had had a good reputation before she met Heinrich. To the second, third and fourth statements he said that he did not know. To the fifth point he said that he did not know, except what had already been said and admitted. To the sixth point he answered that he did not know. To the seventh point he said that Heinrich had talked to the priest about the impediment in the presence of Diemunda, adding, however, that he would like to marry her if the impediment were not so great that it would cancel the marriage. After this, the priest promised to help and find out how the case was. To the eighth and ninth point he said that he did not know. To the tenth statement of Diemunda he agreed that he had often seen the couple visiting church or other public places together, just like any married couple.¹⁶

The third testimony for Diemunda was given by a forty-year-old layman called Steffanus Kalterpeck de Hausnamug. To the first statement of Diemunda he said that Diemunda had been a respectable woman before she met Heinrich. To the second and third statements he said that he did not know, except what he had heard from Diemunda. To the fourth and fifth statements he answered that it was commonly said that Heinrich took Diemunda's virginity and made her pregnant. To the sixth point he said it was true. To the seventh point he said that Heinrich had talked to the priest about the impediment in the presence of Diemunda, but that he wanted to marry her if the impediment was not so great that it would cancel the marriage. After this, the priest promised to help and find out how the case was. To the eighth and ninth points he said that he did not know. To the last point he stated that it was commonly known.¹⁷

The third hearing of this case before the consistorial court of Freising ended after these three witnesses had made their statements. The court gave the litigants ten days to prepare for the next hearing.

The following hearing took place on the 12th of February, 1462. This time also it was Diemunda who acted in a very determined way. She brought further testimonies in her favour before the court. She presented one new witness, the priest Hildeprandus, who was the rector of the parish church of Obernsdorf.

Just like the earlier three witnesses of Diemunda, Hildeprandus also gave his testimony by commenting on the eleven statements presented to the court by Diemunda during the second hearing: To the first statement Hildeprandus said that Diemunda was a virgin until she met Heinrich, otherwise he did not know. To the second,

¹⁵ Munich, Bayerisches Hauptstaatsarchiv, HL Freising, 93, fol. 30r.

¹⁶ *Ibidem*, fol. 30r-v.

¹⁷ *Ibidem*, fol. 30v.

third and fourth points he commented that he did not know. To the fifth point he said that Heinrich had admitted that Diemunda had given birth to his child. To the sixth point he said that he did not know. To the seventh point he stated that at the time mentioned Heinrich had admitted voluntarily in the presence of the Diemunda's mother and several other respectable women that he had taken the virginity of Diemunda and made her pregnant. Heinrich had also said that he would marry her and that he wanted to be with her as soon as they could get a dispensation from the impediment. To the eighth point he commented that he did not remember. To the ninth point he said that he did not know. To the tenth point he commented that Heinrich held Diemunda publicly as his companion and they were commonly considered a married couple. To the eleventh point he said that all these matters were commonly known.¹⁸

Additionally, Diemunda (or her representative) presented the judge with documents issued by the Apostolic Penitentiary. The first one was a letter of grace testifying that the office had granted them a dispensation from their consanguinity on the 17th of March, 1461, and that they could continue in their marriage despite the impediment. The second document was a declaratory letter issued in the name of the Cardinal Penitentiary Philippus Calandrini three days later, on the 20th of March, 1461, which had to be issued together with the letter of dispensation. Both letters are transcribed *in extenso* in the court records.¹⁹

The letter of grace:

Venerabili in Christo patri ... Dei gratia episcopo Frisingensi vel eius vicario in spiritualibus. Philippus miseratione divina tituli sancti Laurentii in Lucina presbyter cardinalis salutem et sinceram in domino caritatem. Ex parte Henrici de Empach laici et Diemunde de Empach mulieris coniugum vestre diocesis nobis oblata petitio continebat, quod ipsi olim ignoranter aliquod impedimentum inter eos existere, quominus possent invicem matrimonialiter copulari, matrimonium inter se per verba legitime de presenti publice contraxerunt illudque carnali copula consumarunt et prolem procrearunt. Postmodum vero ad eorum pervenit noticiam quod quarto consanguinitatis gradu invicem sunt coniuncti. Verum quia si divorcium fieret inter eos gravia exinde scandala possent verisimiliter esoriri supplicari fecerunt humiliter ydem coniuges eis super hiis per sedem apostolicam misericorditer provideri. Nos igitur cupientes ipsorum coniugum animarum provideri saluti huiusmodi scandalum obviare, auctoritate domini pape cuius penitentiariae curam gerimus et de eius speciali mandatu super hoc vive vocis oraculo nobis facto, circumspectioni vestre committimus quod si est ita cum eisdem exponentibus, ut impedimento consanguinitatis huiusmodi non obstante possint in eorum sic contracto matrimonio licite remanere misericorditer dispensetis, dummodo dicta mulier propter hac ab aliquo rapta non fuerit, prolem susceptam et suscipiendam exinde legitimam decernente. Datum

¹⁸ Munich, Bayerisches Hauptstaatsarchiv, HL Freising, 93, fol. 37r-v.

¹⁹ *Ibidem*, fol. 37v.

Rome apud Sanctum Petrum sub sigillo officii penitentie xvi kal aprilis pontificatus domini Pii pape ii anno tertio.

The declaratory letter:

Venerabili in Christo patri ... dei gratia episcopo Frisingensi vel eius vicario in spiritualibus. Philippus miseratione divina tituli sancti Laurentii in Lucina presbyter cardinalis salutem et sinceram in domino caritatem. Ex parte Henrici laici et Diemunde de Empach mulieris coniugum vestre diocesis nobis oblata petitio continebat, quod ipsi olim quasdam litteras in certa et solita forma commissionis vobis directas a sede apostolica obtinuerunt continentes ut non obstante quod 4to essent consanguinitatis gradu coniuncti possint in contracto inter eos matrimonio licite remanere dispensaretis misericorditer cum eisdem. Tamen ipsi timentes litteras huiusmodi ex ea fore surrepticias et invalidas quod unus ipsorum exponentium tertio alter vero 4to gradibus a stipite quini distabant et quod alter ipsorum distaret tertio in ipsis litteris mencio aliqua facta non fuit, supplicari fecerunt humiliter ydem coniuges eis in hac parte per sedem predictam misericorditer provideri. Nos igitur attendentes quod felicitis recordationibus dominus Clementis papa vi quaslibet dispensation. in causa simili ab eadem sede obtentis et obtinenda emissionem de distancia tercii gradus predicti a stipite non facta in dispensatione ipsis nequaquam obstante valide et sufficiente existere ac robore plenarie firmitatis habere auctoritate apostolica declaravit auctoritate domini pape cuius penitentiariam curam gerimus, circumspectione vestre committimus quatenus iuxta huiusmodi apostolica declaratione predictas commissiones litteras sufficientes decernatis et validas perinde existere ac si in eisdem de distante tercii gradus predicti necnon facta fueret. Datum Rome apud Sanctum Petrum sub sigillo officii penitentie xiii kal aprilis, pontificatus domini Pii pape II anno tertio.

Diemunda needed these letters to show that there was no longer a reason on the part of Heinrich to claim that they could not be married because of the marital impediment, as they had been officially dispensed. Procuring a dispensation was very clever on the part of Diemunda, because the letter of grace removed one of the biggest obstacles to the marriage between her and Heinrich. After the court had read these documents and was assured that they were authentic, it gave the litigants twelve more days to procure further testimonies.²⁰

The following hearing in this litigation took place on the 10th of March, 1462. This time, the court heard first the statements of Heinrich and after that gave Diemunda the opportunity to answer his claims. Heinrich took the floor and presented his point of view. He stated that he had never married Diemunda, neither taken her virginity nor made her pregnant, but that all of Diemunda's claims were false and her witnesses either relatives or paid. He asked to be absolved from the unjust accusations of Diemunda and to be allowed to marry someone else. He also asked that Diemunda should be condemned to pay the court expenses for him. He presented his claims with the following twelve statements. He claimed:

²⁰ Munich, Bayerisches Hauptstaatsarchiv, HL Freising, 93, fol. 37r-v, 40r.

1. that he had never consented to a marriage or to an engagement with Diemunda and never thought about it;
2. that he did not take the virginity of Diemunda, but she led a disreputable life and had even confessed to him that she had lost her virginity to a certain Andreas, son of a miller;
3. that he had never called her his wife or lived with her but that he had always refused to do something like that;
4. that the document received from the Penitentiary was not legal, for it mentions that they were already married, which was not true;²¹
5. that he did not know anything about procuring the document from the Penitentiary, but probably the priest Hildebrand was behind this, paid by Diemunda's parents;
6. that a considerable amount of money had been paid to the local priest for getting the dispensation;
7. that the first witness brought before the court by Diemunda was not reliable, for he had been paid;
8. that her second witness was not reliable, for he was a close relative;
9. that, even though it had been testified that they had been promised to each other, Heinrich had never wanted to ask for a dispensation or to marry Diemunda;
10. that all this was commonly known.
11. He added to his statement the description of their family relations which had resulted in the third degree of consanguinity, meaning that they could not get married because of the marriage impediments of canon law;
12. He stated that all this was commonly known, but reserved to himself the right to correct details if wrongly presented.²²

²¹ In fact, Heinrich was right on this point. Canon law stipulates that a marriage dispensation was not valid if details mentioned in the letter of grace were not correct. X 4.14.6, edited in Friedberg II, col. 703. There are actually several suspicious details in the dispensation. The text of it says that they were an already married couple with a child who only after getting married had found out about the impediment. As Heinrich denied that they were married, the fact of being a married couple was not correct (at least from his point of view). Also the mentioning of the late child in the dispensation was not correct, because (as Diemunda also said in her testimony) the son had already been dead for about a year at the time of procuring the dispensation in March, 1461. If one calculates that Diemunda consented to sleep with Heinrich for the first time after Easter 1459 (that year, the 25th of March), the son could not have been born before Christmas of that year. As the testimonies of the parents show that the baby lived only for 12 weeks, then it must have died already in early spring 1460. Thirdly, it also seems that they were aware of the impediment when they had contracted their clandestine marriage, thus the existence of the impediment was no surprise to them. Thus, because of all these incorrect details, Heinrich – correctly – claimed that the letter of grace granted by the Penitentiary was void.

²² Munich, Bayerisches Hauptstaatsarchiv, HL Freising, 93, fol. 59r-60r.

In his twelve statements Heinrich tried to diminish the importance of the testimony that Diemunda had offered to the court. He claimed that the persons who were testifying for her were either paid or relatives, and thus their testimony did not have any value. Furthermore, he claimed that the documents which Diemunda had brought to the court were not valid because of incorrect details and that they had been procured without his consent.

After hearing what Heinrich said in his defence, the court gave Diemunda the possibility to comment and contest his statements. Her comments on Heinrich's twelve points (which are recorded after his statements) are the following and, as the reader can see, differ very much from Heinrich's point of view:

1. She said that he had often promised her marriage;
2. she denies;
3. she does not believe;
4. she admits that the document was from a time when the child had already died, but otherwise does not believe;
5. she does not believe;
6. she does not believe;
7. she does not believe;
8. she admits that they were relatives, otherwise does not believe;
9. she denies;
10. she admits that it is generally known;
11. regarding the family relationship presented by Heinrich she admits some points but disagrees with some others. According to her, they are blood relatives in the fourth degree: Her grandmother and his grandfather were brother and sister;
12. she believes what is to believe and denies what is to be denied.²³

The following handling of the litigation took place a week later, on the 17th of March 1462. During this hearing Heinrich used his right to change (according to point 12 in his testimony) and add things to his deposition concerning the relationship between him and Diemunda. He also corrected some points that were already declared false earlier by Diemunda.²⁴

In addition to the changes made by Heinrich, the court heard three witnesses whom he provided. They were supposed to answer and comment on the twelve statements which Heinrich had presented earlier.

Heinrich's first witness was Bartholomeus Leyttner de Rinding, a 45-year-old layman. He denied the correctness of the first statement made by Heinrich. To the second point he said that he did not know. To the third point he stated that it was

²³ *Ibidem*, fol. 57v.

²⁴ *Ibidem*, fol. 63r.

negative, to the fourth one that it was true, to the fifth one that it was negative and otherwise he did not know. To the sixth and seventh points he said that he did not know, to the ninth point that the witnesses were relatives of Diemunda, otherwise he did not know, to the tenth point that it was true. To the points concerning the degree of relationship between Heinrich and Diemunda (he commented on both the old statements and the corrections), he uttered that parts were true and others not. Some things he did not know. In the end he said that all of this was publicly known.²⁵

The second witness was a fifty-year-old layman called Erasmus de Wenling. He denied the first statement presented by Heinrich. To the second point he said that he did not know, but stated that Diemunda was considered a virgin before her relationship with Heinrich. He denied the third point. To the fourth, fifth, sixth, and seventh points he said he did not know. To the eighth point he stated that they were blood relatives, but otherwise did not know. He denied the ninth point. To the tenth point he said that it was commonly known. Concerning the calculations of relationship between Diemunda and Heinrich, he stated that the first calculations were not right but that the corrected ones were.²⁶

The third witness presented to the court was an over-forty-year-old woman called Anna Schneiderin am Stepfin de Dorff. She stated that the first point claimed by Heinrich was not true. To the second point she said that she did not know. After that she answered only the point concerning the blood relationship between the litigants and stated that the first presentation made by Heinrich was not correct but that the second one corresponded to the truth that was commonly known.²⁷

After having heard these three last witnesses, the court made its decision and gave a definitive sentence. It declared that it released Heinrich from the accusations of Diemunda out of the lack of proof as well as because of the impediment of consanguinity and ordered that the parties were not allowed to appeal the sentence. Additionally, the court condemned Heinrich to pay Diemunda for her lost virginity as well as for the child care in the period their son lived. The sum of the fine was to be decided later.²⁸

The court put an end to the litigation on the 2nd of April, when it decided the sum Heinrich was to pay to Diemunda. The judge stated that he had to give Diemunda 10 pounds of the local money, the first half to be paid on Ascension Day (Thursday, 27th May, 1462) and the other half on the day of St. John Baptist (Thursday, 24th June, 1462), under pain of excommunication.²⁹

²⁵ Munich, Bayerisches Hauptstaatsarchiv, HL Freising, 93, fol. 63r.

²⁶ *Ibidem*, fol. 63r-v.

²⁷ *Ibidem*, fol. 63v.

²⁸ *Ibidem*, fol. 63v.

²⁹ Munich, Bayerisches Hauptstaatsarchiv, HL Freising, 93, fol. 77v.

This was, however, still not the last time when we hear of the case of Heinrich and Diemunda. According to the records of the court, Heinrich was obviously not satisfied with the decision of the court and decided not to pay. This can be seen from a note of the 28th of May (a day after the first payment was to be paid) stating that the court had to send a warning to Heinrich, who had not paid despite the decision of the court.³⁰

WHAT WAS THIS ALL ABOUT?

When we look exclusively at the entry in the Penitentiary records, we see only one of the numerous marriage dispensations granted by this papal office for a couple that had married and only later found out that there was an impediment that forbade them to be married without a papal dispensation. But, when we look at the records of the ecclesiastical court of Freising, we see a totally different picture of the events. This is relatively often (but not always!) the case with the entries in the Penitentiary registers.³¹

The reason for these “misleading” entries is that the petitions taken to the authority of the Apostolic Penitentiary had to be composed according to certain specific rules and using certain types of phraseology. Only by doing this could the supplicants be sure that they would get the kind of grace they needed. In the process of decision-making, the officials of the Penitentiary did not need the information why the petitioners needed the grace they were asking for and, therefore, there is no mention of this fact in the petitions. For the officials it was enough that the petition was composed in the right way and that it was canonically correct. Thus, we sometimes find out that behind a very simple and formulaic-looking petition there may have been a long and complicated story — just as in this case.

It is obvious that the records of the ecclesiastical court of Freising are surely much closer to the truth in this case than the entry among the Penitentiary records. Diemunda and Heinrich were evidently not a happily married couple who had noticed after getting married that their marriage was not valid because of an impediment which they did not know about. In this case, it was the problem of a couple who had been considered married but whose marriage was not celebrated publicly, which left the possibility for litigation.

They had obviously had a sexual relationship that led to the birth of their son, but after his death the relation between Diemunda and Heinrich was no longer as close as earlier and Heinrich had probably had second thoughts. As Diemunda still wished to marry Heinrich, she brought her case before the ecclesiastical court in order to try to

³⁰ *Ibidem*, fol. 116r.

³¹ As another good example, see the case of a Swedish young man, Nanne Kärling: Kirsu Salonen, “Fallet Nanne Kärling. Att kombinera biografiska uppgifter ur olika arkiv,” in *Ny väg till medeltidsbrev*, Skrifter utgivna av Riksarkivet 18 (Stockholm: Riksarkivet, 2002), 99–106; *eadem*, *The Penitentiary*, 402–405.

make him marry her. But, as we saw, she failed in her attempt because of the lack of reliable proof. The fact that she had procured a dispensation from the Penitentiary evidently shows that she had serious intentions to become his wife.³² Why otherwise spend money for such a dispensation if she, at least at some point, did not want to marry him? She had procured the dispensation from the Penitentiary in order to overcome Heinrich's claims that they could not be married because there was an impediment that, according to canon law, hindered their marriage. Unfortunately the letter of grace that she had procured turned out to be void. Heinrich, rightly, contested the validity of the letter of dispensation saying that all the details mentioned in it were not correct, and consequently, as canon law stipulates, the dispensation was void. The court agreed with Heinrich's claim, which was the correct way of proceeding.³³

As the dispensation turned out to be void, Diemunda did not have much other possibility for being married to Heinrich, as the impediment forbade it. Thus, the court decided that her accusations and claims could not be accepted and it released Heinrich from marrying her. If we consider this decision, the sentence of the judge was favourable to Heinrich. But also Diemunda got her part, for the court ordered that Heinrich was to pay for her lost virginity and for the child care.³⁴

Looking at the case of Diemunda and Heinrich in another light, we could actually claim that Diemunda was successful in her demands. The court records of Freising – as well as the records of various other ecclesiastical courts in Europe – contain numerous similar cases in which a woman sued a man in order to force him to marry her and thus fulfill a promise. According to the wording of the entries in these court records, in most cases the situation (and phraseology) seem to have followed the same pattern: A man wanted to have sex with a woman, who only consented under the condition that he promised to marry her. Afterwards they changed their mutual promise of marriage or consent to marriage.³⁵

³² It is, however, impossible to say whether Diemunda had procured the dispensation on her own without Heinrich's knowledge or approval or whether they had asked for it together. As the grace had been granted as early as March, 1461, it could also be possible that they acted together and only afterwards Heinrich changed his plan and no longer wanted to marry her.

³³ Canon law stated that a papal letter of grace was not valid if not all the details in the letter were correct: X 4.14.6., edited in Friedberg II, col. 703. See also footnote 21.

³⁴ Freeing the respondent from the marriage claims of the accuser was actually quite a common result of such litigation. According to Rudolf Weigand, only 10-20% of such litigations in Germany ended with a positive result for the plaintiff. Similarly, obliging the man to pay the woman for child care and lost virginity was quite common in the German territory. See Rudolf Weigand, "Zur mittelalterlichen kirchlichen Ehegerichtsbarkeit," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung*, 67 (1981), 213-247, especially 216-220.

³⁵ The wording in the court records is in most cases more or less the following: "... [actrix] dixit quod reus pro eadem bonisavit et pro copula carnale insisterit, que honesta virgo existit noluit illius assentire nisi eidem matrimonium promitteret, qui videns quod eam aliter vincere non possit, eidem matrimonio in verba legitime de presenti promisit et ipsa viceversa, quo matrimonio contracto partes matrimonium carnali copula consummarunt. ..." At this point, I want to note

The existence of numerous similar litigations before the consistorial court of bishops arose from the ecclesiastical marriage regulations which stipulated that mutual consent was the proof of a valid marriage. There was no need to get solemnly married in church in order to enter a legally valid marriage before the Council of Trent.³⁶ This meant also that mutual consent in secrecy created a valid marriage, especially when followed by carnal copulation. However, in those cases when the consent was changed in secret, it was difficult for one party to testify that the mutual consent had been changed if the other party denied everything. In some cases, the witnesses present at the moment of consent could have been bought to deny everything or they might have died. Then, the existence of the marriage was too easy to contest – just as in the case of Diemunda and Heinrich.

In these kinds of cases, the court normally gave a sentence that the couple was not obliged to get married because of the lack of proof. As this was really the standard decision, why were numerous similar cases still taken to court? We cannot assume that each of these poor women (or men) really turned to the court with the only intention to get her/his fiancée/fiancé back and to be married. They must have been well aware of the earlier decisions of the court and should have understood that there were not very good chances for winning their case. Why did they bother to turn to the ecclesiastical courts in their issue?

In my opinion, most researchers seem to have ignored the fact that maybe these persons were actually not seeking to re-establish their flat relationships with the person with whom they had committed to an engagement or a (clandestine) marriage. I dare to argue that many of these women (it is surely too strong to say all of them) took their cases before the courts for other reasons.

As we saw, the German ecclesiastical courts obliged men who had taken the virginity of a woman and made her pregnant to pay for her lost virginity and child care. This is a factor that one should not forget. The rejected woman could at least get some compensation from the man who had taken her virginity. Thus, at least an economic compensation could have made the woman feel a bit better and not just a leftover that nobody wanted anymore.

that the use of this kind of phraseology was probably needed for handling this kind of case. But I doubt that the diocese of Freising – as well as other parts of Christendom – had been full of men wanting to have sex with women who all were considered pure and virgins, and who only consented after a promise of marriage to be betrayed afterwards.

³⁶ About the validity of the marriage before the Council of Trent, see James A. Brundage, *Medieval Canon Law* (London and New York: Longman, 1995), 72-74 as well as *idem*, *Law, Sex*, 348-364; Charles Donahue jr., "The Canon Law on the Formation of Marriage and Social Practice in the Later Middle Ages," *Journal of Family History* 8 (1983), 144-158.

EXCURSUS: THE PRACTICE BEFORE THE CONSISTORIAL COURT

This example shows very well how the consistorial court of Freising handled such marriage litigations (the principal line of procedure was the same in other types of cases). It heard both the plaintiff and respondent and gave both of them the opportunity to bring testimonies in their favour before the court, both persons and written documents. The testimonies were studied carefully, and people who could have given a false testimony were not accepted. The documents brought before the court were also studied closely in order to be able to find possible forgeries or other inaccuracies.³⁷ After that, the accepted documents were carefully copied *in extenso* into the court records so that their testimony could not be destroyed.³⁸

This case also shows that the people who came before the court for litigation in the late Middle Ages were aware of the regulations of canon (and secular) law and were also capable of using and abusing them during the litigation process. If they did not want to proceed in the litigation on their own, they could hire a proctor, an expert who would help in the process.

In the specific Freising case, Heinrich was the one to profit from the fact that the terms of a legally valid marriage were not very clear. He claimed that he had never contracted a marriage with Diemunda, while she, in her turn, said that they had consented mutually and were legally married. However, because of the lack of witnesses she was not able to prove that the mutual consent had taken place and Heinrich took advantage of this.

On the other hand, Diemunda had taken advantage of canon law and the papal curia when she had procured the letter of grace from the Penitentiary that would dispense them to get married despite the impediment of consanguinity which they were both aware of. Thus, she tried to eliminate one possibility for Heinrich to claim that their marriage was not valid – that of the marital impediments stipulated in canon law. Unfortunately for her, she failed in this attempt because of the inaccuracies in the text of the letter, which Heinrich could easily contest.³⁹ Heinrich showed clearly that he was aware of the fact that a letter of grace was not valid if some of the details mentioned were not correct, and he could (denying the existence of the marriage) profit from this fact.

³⁷ Canon law stipulates about the documents used as testimony before the court: X 2.22.1.-16., edited in Friedberg II, col. 344-353.

³⁸ Sometimes this practice is the only way to obtain evidence about the existence of these documents that were otherwise lost or destroyed.

³⁹ The list of proctor appointments at the beginning of the court book does not make any reference that Heinrich had appointed a proctor to help him in court (Munich, Bayerisches Hauptstaatsarchiv, HL Freising, 93, fol. 2r-9r).

Thus, this case shows in many ways that the litigants in the late Middle Ages (some of them with the help of their legal advisers, some on their own) were aware of the regulations of (canon) law up to such a point that it allowed them to try to use and abuse this law in their own favour and against their adversaries. Thus, it was quite clear for the plaintiffs what kind of claims they had to present before the court in order to get a favourable sentence. On the other hand, the respondents could also profit from the system and claim their counter-accusations in a way which they knew would be useful for them. Thus, under these conditions the plaintiff and respondent were more or less able to know what kind of sentence the court would declare and also what they could gain from the court and what not.

SI ET IN QUANTUM
THE ROLE OF PAPAL DISPENSATIONS
IN MATRIMONIAL CONTRACTS
OF FIFTEENTH-CENTURY RAGUSA

Ana Marinković

Having in mind the evasive character of a valid matrimonial agreement in the pre-Tridentine period, the exceptionally elaborated system of registration and authentication of matrimonial contracts in respect to impediments set by canon law and dowry regulations set by common law, late medieval Ragusa is almost an ideal area for research on the interplay between secular and ecclesiastical aspects of a marriage.¹ Only almost ideal, as the major part of the Ragusan archiepiscopal archives was lost in the great earthquake in the seventeenth century, and it is mostly the records of the Ragusan public notary that are now available for such research. Therefore, it should also not be surprising that very few late medieval Penitentiary documents outside the Penitentiary were traced.² However, I came across a number of references to papal matrimonial dispensations in the notarial registers of matrimonial contracts, which today make up the *Pacta matrimonialia* collection in the State Archives of Dubrovnik. Such an outcome is surely to be

¹ See David L. d'Avray, "Authentication of Marital Status: A Thirteenth-Century English Royal Annulment Process and Late Medieval Cases from the Papal Penitentiary," *English Historical Review* 120, n. 488 (2005), 987-1013, esp. 987-990.

² The "Penitentiary documents outside the Penitentiary" include letters issued by the Penitentiary, documents related to the commission *in partibus*, and the original supplications or their copies. For an overview of these types of documents, see Ludwig Schmugge, "Penitentiary Documents from Outside the Penitentiary," in *The Long Arm of Papal Authority: Late Medieval Christian Peripheries and Their Communication with the Holy See*, ed. Gerhard Jaritz, Torstein Jørgensen, and Kirsi Salonen, CEU Medievalia 8, 2nd ed. (Budapest: CEU Press, 2005), 177-186. In the collection *Acta et Diplomata* in the State Archives of Dubrovnik I have traced three letters issued by the Penitentiary and one letter issued by the archiepiscopal notary related to a Penitentiary dispensation; Državni arhiv u Dubrovniku (State Archives in Dubrovnik, henceforth: DAD), *Acta et Diplomata*, parchments no. 27, 48, 51, and PP-53a. The earliest Penitentiary letter (dated 1450) concerns the absolution of excommunication for physical assault, whereas the other two deal with matrimonial dispensations (dated 1472 and 1509).

expected in the archives of a city where the contracting of marriages was probably the most important factor of social stability, and where the secular authorities were constantly trying to impose their regulations on this primarily ecclesiastic issue.³

The *Pacta matrimonialia* collection is preserved in 14 volumes from 1447 to 1764.⁴ As far as the fifteenth century is concerned, the preserved volumes cover the period from 1447 to 1464, and from 1495 onwards, which means that, unfortunately, records of matrimonial contracts of the pontificates of Paul II and Sixtus IV (1464–1484) have not been preserved. However, having collected the corresponding Penitentiary data from the period 1459–1465,⁵ which roughly cover the pontificate of Pius II (1458–1464), it is, at least to some extent, possible to examine the role of the acquisition of papal matrimonial dispensation in the notarial matrimonial contracts on the basis of 17 cases that appear in both the Penitentiary and local source material. These individual cases may shed some light on the question of how couples, obliged to initiate a dispensation, balanced between papal officials, local secular and ecclesiastical authorities.

PACTA MATRIMONIALIA AND PAPAL DISPENSATIONS

It has to be stressed that the documents of the *Pacta matrimonialia* are strictly related to secular, primarily economic, aspects of marriage, and the point of obtaining a dispensation was not the crucial point. The latter appears only as precondition, and the fact of spouses being conscious of the impediment served as proof of the legality of the dowry. Therefore, one does not find the final result of such a promise, but only the intention that should be verified in the Penitentiary records. Nevertheless, reference to papal matrimonial dispensations is quite often given in these documents, and a marriage contract made under such conditions was not considered valid as long as the impediments had not been removed.

In 39 cases or 9% of all the documented contracts from the period 1447–1464 (approximately 450 cases) there is a requirement to obtain a papal dispensation regarding the impediment of consanguine or affinal relationship between the spouses.

³ Cf. Ana Marinković, “Social and Territorial Endogamy in the Ragusan Republic: Matrimonial Dispensations during the Pontificates of Paul II and Sixtus IV (1464–1484),” in *The Long Arm of Papal Authority: Late Medieval Christian Peripheries and Their Communication with the Holy See*, ed. Gerhard Jaritz, Torstein Jørgensen, and Kirsi Salonen, CEU Mediaevalia 8, 2nd ed. (Budapest: CEU Press, 2005), 135–155 (henceforth: Marinković, “Social and Territorial Endogamy”).

⁴ DAD, *Pacta matrimonialia*, vol. 1–2.

⁵ ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 7–13. Penitentiary registers from 1458, the first year of Pius’ pontificate, have not been preserved, and the earliest cases from the following year match the marriages contracted back in 1455, that is, approximately four years earlier. I also included the first two years of Paul II’s pontificate in order to trace certain petitions noted in the *Pacta matrimonialia* in 1464.

With the exceptions of a couple of commoners, both offspring of non-patrician branches of noble families from Kotor, and another couple of commoners whose social background cannot be precisely identified, all of the cases involve patrician families.⁶ Since approximately half of the matrimonial contracts were agreed upon by commoners (generally of Slavic origin, but also artisans from Italian cities), it seems that almost 20% of patrician marriages were contracted under the precondition of obtaining a papal dispensation.

The level of consanguine or affinal relation is not always mentioned in the contracts, but the great majority of cases refer to the fourth degree of affinity (28 out of 34 with the precise level of impediment). However, when compared to the Penitentiary records, they surprisingly show that almost none of the levels or types of kinship correspond, that is, only the three cases which were recorded in the Penitentiary registers as the fourth degree of affinity match the data from the *Pacta matrimonialia*. This might be just a simplification, since for a public notary the actual level of kinship did not really matter, but it poses the question of the real value of a matrimonial dispensation.

Though in only five out of 39 cases the dispensation was acquired before going to the public notary to settle a matrimonial agreement, it seems that the formula *si et in quantum* or *in casu quo* was not just a rhetorical figure of speech. In certain cases the parties even agreed upon solving the possibility of failure in acquiring a dispensation.⁷ The nominal importance of the dispensation in the secular context is clearly visible from reiterated mentions in the contracts. It is firstly referred to at the very beginning of the document when the future spouses expressed their awareness of the existence of an impediment to their marriage and their intention or promise to acquire a papal dispen-

⁶ Contrary to the Penitentiary records, where the title of *ser* or *donna* is used in a quite unreliable manner, in the local sources the titles of the patriciate are used very precisely (*ser*, *donna*, *dominus*, *miles*, etc.), which makes the analysis of the social context considerably easier. Although not based on the data of the same period, these analyses show certain patterns that have already been observed in the Penitentiary material: The list of the leading five families regarding the number of matrimonial impediments is identical in both of the sources, papal and local; see Marinković, "Social and Territorial Endogamy," 146-148. The families Goze and Bona share the top place with twelve members each involved in such matrimonial contracts, the second is the Sorgo family with 8, then the Gondola with 6 members, the Zamagno with 5, and so on. As argued when examining the background of the high number of matrimonial supplications from Dubrovnik, the trend of marrying between persons in consanguine or affinal relationship was stronger in the most influential families. The proof that numerous supplications made by those families is not only related to the number of their members but to the fact that prominent families, such as Goze and Bona, appear with a significantly higher percentage of matrimonial contracts with impediments to be solved.

⁷ For example, *si causa accideret quod presens matrimonium per mortem alterius jugalium dissolveretur ante quam consumatum esset ... aut dispensatio predicta obtineri non posset, tunc et eo casu dictus ser Cristoforus teneatur et debeat omnes denarios quos recepisset restituere dicto ser jacobus infra sex menses subsequunturos a die casus dissolutionis intervente, vel dispensationis non obtente*; DAD, *Pacta matrimonialia*, vol. 1, fol. 80v-81r.

sation. Then they made the contract under the condition of obtaining a dispensation.⁸ Sometimes it is mentioned at the point of agreeing upon the deadline of the bride's transfer to her husband's home: She would move in at the latest on the agreed date, but only after the dispensation was obtained. Further, the dispensation is mentioned in the context of the dowry: If, having obtained the dispensation, one of the spouses died before the marriage was consummated, then the bridegroom's party would be allowed to keep a certain amount of money. If the dispensation was not obtained, the money had to be restituted. Regarding the issuing of the *carta dotalis*, the contract reads that the document will be issued after having obtained dispensation. In addition, there were several cases in which the spouses mentioned the impediment only after the contract had already been written down and the formula *si et in quantum* was inserted as a marginal note.

One of the most telling indications of the role of the dispensation is the deadline for the transfer of the bride. The contract set the period for the bride to be transferred to the house of her spouse. This period varied from several weeks to ten years, whereas in cases when the requirement of obtaining a dispensation was involved, the period similarly varied, but it was usually not shorter than two years. Having compared the contracts with the supplications, that is, the 17 matching cases mentioned above, it seems that couples usually waited until the last moment, or at best until the last year of their "engagement," to turn to the Penitentiary. It also happened often that they acted too late, which forced them to ask for an absolution as well.⁹ In some cases the spouses did not mention the existence of an impediment to the notary, but later they asked for absolution saying that they knowingly entered such a marriage.¹⁰ It also happened that the couple actually lied in the supplication about their marriage having been contracted in ignorance of the impediment, though in the contract they clearly set the precondition of obtaining a dispensation.¹¹

The strategy of avoiding the actual beginning of the marriage conforms to what is known on this issue from other sources. After having received the dowry, men were in no hurry to proceed with the transfer of the bride to their house for consummation

⁸ In the *Pacta matrimonialia* the phrase *matrimonium contraxerunt per verba de presenti* is used only in the case of two adult persons whose relation was free of impediments. When a dispensation was still to be obtained, there is an additional phrase, such as *presens matrimonium locum et effectum habeat si et in quantum dispensatio obtinebitur a summo pontifice; in casu quo impetrari poterit dispensatio, matrimonium contrahent* or similar.

⁹ This happened to Johannes Sigismundi de Georgio and Marussa Junii de Gradis, who set the deadline for two years, but obtained a dispensation only after three years; ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 10, fol. 87r-v; DAD, *Pacta matrimonialia*, vol. 2, fol. 102r-v.

¹⁰ For example, ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 9, fol. 25v-26r; DAD, *Pacta matrimonialia*, vol. 2, fol. 105v.

¹¹ This happened in the case of the commoner couple of Kotor origin; ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 10, fol. 75v.; DAD, *Pacta matrimonialia*, vol. 2, fol. 136v.

of the marriage.¹² The problem was so serious that in 1446 the Ragusan State set regulations on this issue: The Great Council passed a decision that if the dowry was given before the bride moved in with her husband, he was obliged to respect the deadline agreed for her transfer to his house on penalty of one quarter of the dowry.¹³ In 1458, another law was passed: The dowry was to be given not more than six days before the bride was brought to her husband's home. The penalty for trespassers of this regulation was set at a fine of 500 perper, and six months in prison.¹⁴ The same punishment was stipulated for delaying the wedding, with the deadline for repayment of the dowry within eight days.¹⁵

THE CASE OF *DOMINUS JUNIUS MARINI DE GRADIS*

Opposite the general trend of postponing the actual start of marital life were a few exceptions to this practice, when the couple was in a hurry to start living together. One of these rare examples was that of the Ragusan nobleman Junius Marini de Gradis (1423–1479), two of whose marriages (out of three) may throw some light on the practice of acquiring a dispensation, but only after one clarifies the motives for such exceptional velocity as well as Junius' social circumstances.

¹² For examples of grooms avoiding the consummation of marriage and the consequent legal sanctions in the second half of the fifteenth century, see Zrinka Nikolić, "Rejection of marriage in medieval Dubrovnik," *Otium* 7-8 (1999-2000), 91-93.

¹³ *Item cum zo sia che l'antiqua consuetudine era che quando la spoxa doveva andar al marito, allora se dava et pagava la dota, et hora tuto el contrario si fa, perche et anni et mesi avanti el consumar del matrimonio chadaun marito quasi vuol la dota. Per lo qual dar di dota tanto tempo inanzi, naschono alla volta mazor inconvenienti, il perche li denari vano ut plurimum dele man a caxon deli mali tempi et captive saxon deli traffichi occurenti; per la qual cossa poi succedeno odii et differentie fra le parentelle contrate. Per tanto a conservation et reintegration di tal parentelle, ordenemo che se alguna dota o altro com'e dito sera data o sborsata per piu tempo avanti che la spoxa vada al marito, che allora in tal caso el marito sia tenuto de menar la dita soa spoxa infra el termene che stabilito sera tra le parte; DAD, *Manualia practica Cancelarii, Leges et Instructiones, Liber Viridis*, cap. 371, fol. 237r (henceforth *Liber Viridis*); Branislav M. Nedeljković, *Liber viridis* (Belgrade: Srpska akademija nauka i umetnosti, 1984), 328 (henceforth Nedeljković, *Liber Viridis*).*

¹⁴ *Alchun non possa dar ne tuor da mo avanti alchuna dote ne parte d'essa ... salvo zorni sei avanti el tradur della sposa per consumatione del matrimonio; Liber Viridis*, cap. 478, fol. 297r; Nedeljković, *Liber Viridis*, 418. 500 perpers was a considerable amount of money having in mind that at this time the dowry itself was officially limited to 1600 perpers; cf. Susan Mosher Stuard, "Dowry Increase and Increments in Wealth in Medieval Ragusa (Dubrovnik)," *Journal of Economic History* 41/4 (1981), 804.

¹⁵ *Ma se forse el novizzo per haver in man la dota fingesse de voler far le nozze et non le facesse, habbando havuta la dicta dota como e dicto, tunc et eo casu, passato el giorno qual era deputato alle nozze, esso novizzo cada in pena de yperperi cinquecento et de star mesi 6 in prexone et oltra le dicte pene sia tenuta infra giorni octo restituir la dota la qual havesse ricevuto, sotto pena de star el dopio in prexone; Liber Viridis*, cap. 478, fol. 297v; Nedeljković, *Liber Viridis*, 419.

Junius occurs twice in each source.¹⁶ In January, 1460, he contracted a marriage with a Ragusan noblewoman, Johanna de Bono (de Volcio), under the precondition of obtaining a dispensation, *in casu quo obtineri et impetrari poterit dispensatio a summo pontifice*. They set the date of Johanna's moving in for after Easter, *post festum resurrectionis dominice*.¹⁷ Already at the beginning of March, that is, two months after the agreement, and – what is more important – before Easter, the matching entry appears in the Penitentiary records.¹⁸ Only three and a half years later, after Johanna had passed away, in September, 1463, Junius contracted another marriage with Margarita de Goze. This agreement was contracted with the same precondition of obtaining a dispensation, with the deadline agreed on six months after having obtained the dispensation.¹⁹ Similarly, two months later, the approved supplication is recorded in the Penitentiary register²⁰ only a couple of days after Junius received the dowry.²¹ These two cases might suggest that the channels for obtaining a dispensation were prompt and well-working, but the spouses, primarily males, were calculating its acquisition for their own very practical reasons.²² However, before reaching any conclusion, it is interesting to check the social background of the persons in question in order to discern reasons for such prompt actions and to verify whether their position had any influence on the process of obtaining a dispensation.²³ Though being a member of one of the leading patrician families in Dubrovnik, Junius' earliest appearance in the sources is rather unprestigious: In 1436 he was imprisoned with several other young noblemen. The type of offence that he had committed was not recorded, but the Great Council discussed his protest against the humidity of the cell.²⁴ The next document mentioning Junius was issued in 1453 by

¹⁶ His first marriage was free of impediments and contracted in the period not covered by the *Pacta matrimonialia*.

¹⁷ DAD, *Pacta matrimonialia*, vol. 2, fol. 104r-v.

¹⁸ ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 8, fol. 19r.

¹⁹ DAD, *Pacta matrimonialia*, vol. 2, fol. 154v-155r.

²⁰ ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 11, fol. 121v.

²¹ DAD, *Pacta matrimonialia*, vol. 2, fol. 155r.

²² The case of the aforementioned commoner couple from Kotor is puzzling, since they obtained a dispensation only six weeks after contracting the marriage.

²³ On Junius' career, see Konstantin Jireček and Jovan Radonić, *Istorija Srba* (History of the Serbs), vol. 2 (Belgrade: Naučna knjiga, 1952), 369-370; Dušanka Dinić-Knežević, *Dubrovnik i Ugarska u srednjem veku* (Dubrovnik and Hungary in the Middle Ages) (Novi Sad: Vojvođanska akademija nauka i umetnosti, 1986), 140.

²⁴ DAD, *Acta Consilii Maioris*, vol. 5, fol. 99r; Zdenka Janeković Roemer, *Okvir slobode: Dubrovačka vlastela između srednjovekovlja i humanizma* (The framework of freedom: Ragusan nobility between the Middle Ages and Humanism) (Dubrovnik: Zavod za povijesne znanosti HAZU, 1999), 261. In 1423, Junius is mentioned as an infant member of the family de Gradis in a certain land distribution in Konavle; DAD, *Cathasticum, Libro rosso*, 294v; Aleksandar Solovjev, "Le patriciat de Raguse au XVe siècle," in: *Rešetarov zbornik iz dubrovačke prošlosti*, ed. Vladimir Čorović et al. (Dubrovnik: Jadran, 1931), 63.

nobody less than Pope Nicholas V, appointing him *Comes palatinus Lateranensis* for his earlier merits.²⁵ Such a rapid success in his diplomatic career continued with an appointment to the office of *orator* of George Branković, despot of Serbia. Later, in 1453, Junius acted on behalf of Despot George at the court of King Alphonse of Aragon and Sicily in the matter of defense against the Ottomans.²⁶ On that occasion, Alphonse issued a letter asking George for consent to make Junius the king's counselor (*consiliarius*), for Junius *ipse nullatenus absque vestri licentia titulum huiusmodi assumere volebat*, showing the utmost diplomatic skill.²⁷ In 1454, Junius was sent to Francesco Sforza, duke of Milan,²⁸ from where he proceeded to Venice to join the Hungarian legation promoting war against the Ottomans, according to an entry in the *Secreta* of the Venetian Senate from 1455.²⁹ During 1459, after the death of the Serbian despot, Junius acted as Ragusan ambassador to King Ferdinand of Sicily, Jerusalem and Hungary concerning certain privileges of Ragusan merchants.³⁰ In 1464 Junius was the Ragusan representative on the occasion of the coronation of the Hungarian King Matthias.³¹

However, in regard to Junius' supplications for papal matrimonial dispensations, the tasks he performed for the curia after Despot George died are more relevant. In 1457, Junius went to Bosnia as a papal envoy, where he was captured by *vojvoda* Tvrtko Stančić. On April 21, Pope Calixtus III wrote a letter of protest to the Bosnian King Tomaš, underlining Junius' legations to Hungary, Bosnia, and Serbia, and asking for

²⁵ Augustin Theiner, *Vetera monumenta Slavorum meridionalium historiam illustrantia*, vol. 1 (1198–1549) (Rome: Typis vaticanis, 1863), 410.

²⁶ Lajos Thallóczy, "Frammenti relativi alla storia dei paesi situati all' Adria," *Archeografo Triestino* 6 (1911), 69 (henceforth: Thallóczy, "Frammenti").

²⁷ Thallóczy, "Frammenti," 70. Three years later, in 1456, Junius visited king Alphonse again; Lajos Thallóczy, and Antal Áldásy, *Codex diplomaticus partium regno Hungariae adnexarum*, *Monumenta Hungariae historica*, vol. 33 (1198–1526) (Budapest: Magyar tudományos akadémia, 1907), 217 (henceforth: MHH 33).

²⁸ MHH 33, 191. In 1455, Junius wrote a letter to Duke Sforza from Mantua, where he apparently went on business; Vincent Makouchew, *Monuments historiques des Slaves méridionaux*, vol. 2 (Belgrade: Imprimerie officielle du Royaume serbe, 1882), 86–87 (henceforth: Makouchew, *Monuments historiques* 2). There is another letter of Junius to Sforza written in 1460 from Pesaro, but on this occasion, already in his function as Ragusan ambassador, regarding the liberation of certain Ragusan captives; Makouchew, *Monuments historiques* 2, 91–92.

²⁹ Šime Ljubić, *Listine o odnošajih između južnoga Slavenstva i Mletačke Republike* (Documents on the relations between the South Slavs and the Venetian Republic), vol. 10 (1453–1469), *Monumenta spectantia historiam Slavorum meridionalium*, vol. 22 (Zagreb: JAZU, 1891), 45–46 (henceforth: Ljubić, *Listine* 10).

³⁰ Junius was accompanied by another ambassador, Paladinus de Gondola; Ljubić, *Listine* 10, 141–143.

³¹ Together with Jacobus Marini de Gondola; DAD, *Acta Consilii Rogatorum*, vol. 18, fol. 26v–27r, 65v; Josip Gelcich and Lajos Thallóczy, *Diplomatarium relationum Reipublicae ragusanae cum Regno Hungariae* (Budapest: Magyar tudományos akadémia, 1887), 764.

Tvrtko to be punished.³² Certainly, the explanation of papal interest in Junius was based on the role he played in diplomatic actions related to the crusade against the Ottomans, and in his acquaintance with the courts of Serbia and Hungary, the most interested parties.

Such a distinguished diplomatic career as Serbian, papal, and Ragusan envoy had to be complemented with corresponding family connections which together contributed to his social status. Junius witnessed such a strategy with each of his three marriages. His first wife, Nicoletta, whom he married in or before 1438,³³ was the daughter of *miles* Alovsius de Goze, one of the most influential men in Dubrovnik at the time.³⁴ After she passed away in 1459, Junius married Johanna Volce, whose uncle (mother's brother) was *miles* Jacobus Marini de Gondola, with whom he later undertook Hungarian legations. Junius' third wife, Margarita Nicolai Simonis de Goze, was a first cousin of the above-mentioned *miles* Volcius de Babalio. Although Margarita brought to this marriage three houses in Dubrovnik and land in its surroundings,³⁵ it may be assumed that Junius was not interested in the financial gain, but rather in the social aspect of matrimonial ties. As he was an important member of the Ragusan social elite, he was eager to round out his "curriculum" with an adequate marital partner, and it is indicative that through his marriages he became related to three prominent diplomats, the *milites* Alovsius de Goze, Jacobus de Gondola and Volcius de Babalio. With his first marriage, at the age of fifteen, he established the highest possible social connections, and was ready to start building his diplomatic career. With his second and third marriages, though contracted with chosen partners, he had another priority – a male offspring. From the first marriage he got a daughter, Marussa, and his second wife died before she managed to fulfill this task. Junius pursued the goal until, in his third marriage, he got a son, whom he named after his father.³⁶

For all the above-said, it is quite clear why Junius took prompt actions in solving the impediments that would undermine his matrimonial contracts. Whether it was a coincidence that the only Ragusan supplicant who obtained dispensation in such a short period of only two months (and moreover, twice) was a papal official and Lateran knight, is a matter of speculation. In any case, Junius did expect his supplications to be

³² Augustinus Theiner, *Vetera monumenta historica Hungariam sacram illustrantia*, vol. 2/1 (Rome: Typis Vaticanis, 1860), 290-291.

³³ Registers of matrimonial contracts do not exist for that period, but there is an entry in the dowry registers; DAD, *Liber dotium Notariae*, vol. 5, fol. 160.

³⁴ Nicoletta's sister Petronella married another *miles*, Volcius Blasii de Babalio, but only after Nicoletta had already died.

³⁵ DAD, *Liber dotium Notariae*, vol. 7, fol. 47v.

³⁶ Irmgard Mahnken, *Dubrovački patricijat u XIV veku* [The Ragusan nobility in the 14th century], Izdanja Srpske akademije nauka i umetnosti, Odeljenje društvenih nauka, 36 (Belgrade: SANU, 1960), table 37.

solved within a very short period: The first time in less than three months, and the second time in six months. The possible relation of this fact to his high position may be two-fold; it is possible that a Lateran knight had channels that made the acquisition of a dispensation more rapid, but it is also plausible that such social status elicited measures without delay, contrary to the common practice among Ragusan noblemen.

Regardless of the fact that ecclesiastical and secular marriage existed as two distinct contracts, papal approval evidently played a significant role in the latter. However, the practice of postponing the execution of the contract was deeply rooted among the Ragusan social elite, pushing the economic interest to the fore. Junius de Gradis was an exception to this practice, having rather respected the social interest of an opportune marriage. Junius' case suggests that persons on the very top of the social hierarchy were greatly interested in contracting a flawless matrimonial agreement to be realized quickly. It is, though, not clear, whether he used his connections in the curia to accelerate the procedure of obtaining the dispensations or, in his position, he just did not delay his marriages. Unquestionably, he did not want to delay the procreation of a son who was not only to inherit the properties, but also to continue the family line. The consequences of an invalid marriage were proportionate to the social status of the partners: The wealthier the family was, the more inheritance there was to lose; the higher on the social scale, the more important it was to procure continuity in sharing state offices. In general, in spite of the general practice of delaying the actual start of the marriage, it was a common point to refer to papal dispensation as means of its legitimisation as often as possible. The question as to what extent obtaining a dispensation was truly an accepted pre-condition for a valid matrimonial agreement and to what degree it was an element of rhetorical strategy and personal interest, remains to be revisited.

MATRIMONIAL DISPENSATION:
HOW THE PENITENTIARY HANDLED CASES OF IMPOTENCE

Ludwig Schmugge

In this paper I have chosen one particular topic from the large field of matrimonial dispensations. Within the field of graces, absolutions, and dispensations asked for by men and women from all social contexts and every country between Poland and Portugal and across Europe from Iceland to Cyprus, matrimonial dispensations top the statistics by a large margin. To give an idea of the quantity of the material, here are some figures: In the years between 1455, that is, the beginning of Calixtus III's pontificate, and 1492, when Alexander VI became pope, some 42,560 matrimonial supplications were registered by the scribes of the Apostolic Penitentiary. 48% of all petitions came from Italy, 16% from France, 14% from the territory of the medieval German Empire, 12% from the Iberian Peninsula, 9% from the British Isles (including Ireland) and only 1% from Eastern Europe.¹ For the Empire, the supplications containing matrimonial cases are being published by the German Historical Institute in Rome in its series *Repertorium Poenitentiariae Germanicum*.²

Here, however, I shall not concentrate on the impediments of too-close family relationships nor the *cognatio spiritualis* which resulted from kinship created by baptism or confirmation. I shall also leave aside the many cases where – mostly women – were forced into marriage by their parents or relatives. Nor do I intend to study the complaints of men or women who were left by their respective partners and I shall pass over the many Romeo-and-Juliet-type stories reported in a good number

¹ ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 5-41.

² *Repertorium Poenitentiariae Germanicum. Verzeichnis der in den Supplikenregistern der Pönitentiarie vorkommenden Personen, Kirchen und Orte des Deutschen Reiches*, vol. III: *Calixt III. (1455–1458)*, ed. Ludwig Schmugge and Wolfgang Müller (Tübingen: Niemeyer, 2001); vol. IV: *Pius II. (1458–1464)*, ed. Ludwig Schmugge, Patrick Hersperger and Béatrice Wiggenhauser (Tübingen: Niemeyer, 1996); vol. V: *Paul II. (1464–1471)*, ed. Ludwig Schmugge, Peter Clarke and Alessandra Mosciatti (Tübingen: Niemeyer, 2002); vol. VI: *Sixtus IV. (1471–1484)*, ed. Ludwig Schmugge and Alessandra Mosciatti (Tübingen: Niemeyer, 2005) (henceforth: *RPG*, with vol. and no. of the *regestum*).

of supplications, not from Italy alone. In this article, my topic will be impotence, the impossibility of entering into the carnal union necessary for a valid marriage as was taught by medieval canonists.³

IMPOTENCE IN CANON LAW

According to the teachings of modern theologians and canonists, impotence represents one of the few causes which even today may result in a declaration of nullity of a legally contracted marriage in the Catholic Church: *Impotentia coeundi antecedens et perpetua, sive ex parte viri sive ex parte mulieris, sive absoluta sive relativa, matrimonium ex ipsa natura dirimit*. These are the words taken from the actual *Codex Iuris Canonici* promulgated by Pope John Paul II in 1983.⁴

As producing children, the *procreatio prolis* as canonists say, was the most important and for quite a few theologians the one and only reason for contracting a marriage, the inability to fulfill the requirement of regular sexual intercourse leads to the conclusion that such a relationship may be declared irregular. Because the ultimate aim of a union of man and woman, that is, giving birth to children, cannot be reached by natural ways, the marriage may be dissolved. In such cases, the (female) partner is permitted to enter into another marriage.

Ever since the twelfth century medieval canonists have discussed the argument of impotence, just as historians of law, their modern commentators, have done.⁵ Almost twenty years ago, James Brundage traced the teachings of canonists on this matter from Gratian to the early thirteenth century in one of his finest articles, entitled "Impotence, Frigidity and Marital Nullity in the Decretists and the Early Decre-

³ For more about the Penitentiary and marriage petitions, see Ludwig Schmugge, Patrick Hersperger and Béatrice Wiggerhauser, *Die Supplikenregister der päpstlichen Pönitentiare aus der Zeit Pius' II. (1458–1464)*, Bibliothek des Deutschen Historischen Instituts in Rom 84 (Tübingen; Niemeyer, 1996), 68–95 (henceforth: Schmugge, Hersperger and Wiggerhauser, *Supplikenregister*), and Kirsi Salonen, *The Penitentiary as a Well of Grace in the Late Middle Ages. The Example of the Province of Uppsala 1448–1527*, *Annales Academiae Scientiarum Fennicae* 313 (Saarijärvi: Academia Scientiarum Fennica, 2001), 103–119 (henceforth: Salonen, *Penitentiary*).

⁴ *Codex Iuris Canonici* (1983), Liber IV c. III can. 1084 § 1.

⁵ A comprehensive study of the argument of impotence in the theological literature of the 12th and 13th centuries (and some important observations on the canonistic sources), presenting the scholarly discussion until the 1950s, was written by Josef Löffler, *Die Störung des geschlechtlichen Vermögens in der Literatur der autoritativen Theologie des Mittelalters. Ein Beitrag zur Geschichte der Impotenz und des medizinischen Sachverständigenbeweises im kanonischen Impotenzprozess*, Akademie der Wissenschaften und der Literatur in Mainz, Abhandlungen der Geistes- und Sozialwissenschaftlichen Klasse, Jahrgang 1958, Nr. 6 (Wiesbaden: Harassowitz, 1958), 297–379 (henceforth: Löffler, *Störung*); many thanks to Paul Mikat for pointing out this article to me. Recently, W. Kursawa, *Impotentia coeundi als Ehenichtigkeitsgrund*, *Forschungen zur Kirchenrechtswissenschaft* 22 (Würzburg: Echter, 1995) has taken up the argument.

talists.”⁶ He summed up Gratian’s position as follows: “Moreover, if one partner [after having consented to marriage, LS] proved incapable of intercourse and hence was unable to consummate the marriage, the Church could dissolve the union and the partners (or at least the partner who was not sexually incapacitated) could remarry.” Gratian’s exposition of this point appeared in the second part of his *Concordia*, mainly in *Causa* 27, *Quaestio* 2, Canons 28 and 29, as well as in *Causa* 33, *Quaestio* 1 in greater detail. In a statement following Canon 29, Gratian declared that *impossibilitas coeundi ... si vero ante carnalem copulam deprehensa fuerit, liberum facit mulieri alium virum accipere*.⁷ The same assertion can be found in *Causa* 33: *Dictum ante q. 1: Verum ante quam confirmetur impossibilitas offitii solvit vinculum coniugii*, and in his *Dictum post Canon 3* of the same *Quaestio* (*ecce quod impossibilitas reddendi debitum vinculum solvit coniugii*).⁸

Gratian’s teaching was not approved unanimously by canonists. Even in the time of popes Alexander III and Innocent III (see for example X 4.2.9, X 4.15.2-4 and X 4.15.6) it was not entirely accepted by the canonistic mainstream that sexual incapacity might be a reason for dissolving a marriage. Celestine III and Honorius III added a very important detail to the theory concerning impotence, ruling “that three years of vain efforts to consummate a marriage furnished a sufficient basis for a nullity declaration.”⁹ This will be important for understanding the decisions of the Papal Penitentiary in the cases discussed below. Even in the thirteenth century decretalists expressed their doubts whether the popes had any power to dissolve a marriage on the grounds of impotence, as Brundage showed in his article. But it seems important to me that, in his *Glossa ordinaria* to *Causa* 32, *Quaestio* 7, Canon 25 and *Causa* 33, *Quaestio* 1, Johannes Teutonicus (following Gratian) argued that a marriage could be dissolved on the grounds of permanent impotence.

IMPOTENCE AND THE PENITENTIARY

After this brief summary of the teachings of Gratian and the popes in the twelfth and thirteenth centuries on male impotence, let us switch to real life, that is, to two supplications presented to the Apostolic Penitentiary in 1477 and 1484. Both cases were brought to Rome by women during the pontificate of Pope Sixtus IV (1471–1484).

⁶ First printed in *Proceedings of the Seventh International Congress of Medieval Canon Law* (1984), Monumenta iuris canonici series C, vol. 8, ed. Peter Linehan (Città del Vaticano: Biblioteca Apostolica Vaticana, 1988), 407–423; reprinted in James Brundage, *Sex, Law and Marriage in the Middle Ages* (Aldershot: Variorum, 1993), Nr. X (henceforth: Brundage, “Impotence”).

⁷ Aemilius Friedberg, *Corpus Iuris Canonici*, 2 vols. (Leipzig: Tauchnitz, 1879–1881), vol. I, col. 1071 (henceforth: Friedberg, *Corpus*).

⁸ Friedberg, *Corpus*, vol. I, col. 1149 and 1150.

⁹ X 4.15.5, 7. The citation is from Brundage, “Impotence,” 416.

Neither of them made the journey to the Roman Curia in person. In the first case, from Gaeta in Italy, it would have been possible to reach Rome in two or three days. In the second case, from the diocese of Constance in southern Germany, the journey would have lasted two to three weeks one way. Both women presented their request “by mail” and through a proctor (*procurator*), a legally well-trained person. The *procurator* formulated their petition, *supplica*, into proper Latin with respect to canon law and in accordance with the *stilus curiae*. After a positive decision (*signatura*) given by an official of the Penitentiary, the *supplica* was copied into the registers of the Penitentiary by a professional scribe. In difficult cases, such as those discussed below, the *auditor* of the Penitentiary, the chief canonist of the office, would be asked to give his expert opinion. On the basis of his statement, the decision of the *regens* – the substitute of the *penitentiarius maior*, being in the first case Antonius Parentucelli, bishop of Luni-Sarzana, and in the second case Julianus de Maffei, bishop of Bertinoro – was sent to the supplicants’ local bishop (*committatur ordinario*). The bishop himself or his substitute in legal matters, the *officialis*, had to take up the case and was ordered to enquire into the circumstances. If he was able to confirm the truth of the petitioner’s declaration by a proper canonical investigation, the bishop was entitled to rule in accordance with the *auditor*’s decision in his statement given at the end of the registered text (*si ... sibi legitime constiterit ... declaret ut petitur*). Thus far the technical itinerary of the petitions through the Roman Curia;¹⁰ but let us now look at the content of the petitions themselves.¹¹

In the first case, a certain Marchisella Pulcis, a woman from Gaeta (a seaport near the northern border of the Kingdom of Naples) declared in June, 1477, through her proctor that some time ago she had contracted marriage *per verba de presenti* with Antonius de Morrazo, a layman from Terracina (another seaport some 30 kilometers north of Gaeta, not far from the southern border of the Papal State). When, after the contract (and the ceremonies, we may assume), the newlywed couple went to bed together to consummate their marriage, it was obvious that Antonius could not penetrate his wife because of his impotence (*cum ea iacuit et propter frigiditatem nature ... matrimonium consummare non potuit*). Even at the moment of the petition (we do not know how much time had passed since the wedding) Antonius was, as Marchisella pointed out, still impotent (*et ad consumandum ad presens impotens*

¹⁰ For the history and functioning of the Apostolic Penitentiary in general, see Emil Göller, *Die päpstliche Pönitentiarie von ihrem Ursprung bis zu ihrer Umgestaltung unter Pius V.*, 2 vols. in 4 parts, Bibliothek des Königlich Preussischen Historischen Instituts in Rom 3, 4, 7 and 8 (Rome: Regensburg, 1907, 1911) (henceforth: Göller, *Pönitentiarie*); Ludwig Schmugge, *Kirche, Kinder, Karrieren. Päpstliche Dispense von der unehelichen Geburt im Mittelalter* (Zurich: Artemis & Winkler, 1995), 81–133. For the canonistic background of dispensations in general, see Schmugge, Hersperger and Wiggerhauser, *Supplikenregister*, passim and Salonen, *Penitentiary*, passim.

¹¹ Both texts are published in their registered Latin version in the Appendix.

existit). Without hiding her disappointment, she continued her sad story telling the pope, to whom all supplications had to be addressed, that she had not known anything about Antonius' impotence before getting into bed with him (*contraxerit matrimonium ignorans penitus ipsius Antonii frigiditatem*). But, as she wanted to have children (*cupiatque ... mater effici liberorum*) and as some ignorant people (*iuris ignari*) might claim that Marchisella was not entitled to marry a second time and thus would have to stay with Antonius, she asked for a papal letter of declaration confirming that she was no longer bound to stay with Antonius and that she would be free to marry someone else (*ipsam ... eidem Antonio nullo vinculo matrimoniali astrictam fore, sed cum quocumque alio viro ... matrimonium libere contrahere ... posse*). Probably, thanks to the knowledge of canon law of her proctor, her petition did not fail to mention that her future husband must not be too closely related to her in accordance with canons 50 and 51 of the Fourth Lateran Council of 1215 (*alio viro sibi nullo gradu prohibito coniuncto*).¹²

The second petition comes from a lady named Anna Murerin, who lived in the diocese of Constance in southern Germany. Some time ago (*olim*) she had married a certain Henricus Schmiger according to the law (*per verba legitima de presenti, publice*) in order to become a mother of children (*cupiens misericorditer mater effici liberorum*), assuming that Henry would be able to fulfill her wish (*credens [eum]*¹³ *esse potentem et habilem et idoneum ad actum coniugalem exercendum*). But although Henry had said so (*asserentem se ad id esse potentem*), he could not have sexual intercourse with her (*sed dictus Henricus ad id impotens illud [matrimonium] cum dicta exponente [= Anna] consummare non potuit*).

Thus, Anna, who claimed to be young and not inclined towards celibacy (*... iuvenis est, non possit contineri ...*) declared that she wanted to have another husband and become a mother (*cupiat alicui alteri potenti viro matrimonialiter copulari et mater effici liberorum*). What follows is the same string of arguments we have already seen in Marchisella's supplication: Some simple and canonically ill-informed people might maintain that she must remain with Henry as her husband (*a nonnullis tamen simplicibus et iuris ignaris ... asseritur eandem exponentem ... dicto Henrico vinculo matrimoniali astrictam et obligatam esse*) and that she, therefore, could not re-marry and have legitimate children (*et propterea matrimonium cum aliquo alio viro libere contrahere ... non posse prolemque suscipiendam exinde illegittimam fore*). In order to silence such voices against her (*ad ora igitur talium ... obstruenda*), Anna asked the pope for a formal declaration (*littera declaratoria*) that would guarantee her freedom to re-marry and have legitimate children (*... matrimonium cum*

¹² *Conciliorum oecumenicorum decreta*, ed. Josephus Alberigo et al., 3rd ed. (Bologna: Istituto per le scienze religiose, 1973), 257-258.

¹³ I have added the text in [...] for a better understanding of the meaning.

aliquo alio libere contrahere et in eo...licite remanere posse prolemque exinde susceptam legitimam fore).

In the later Middle Ages, the letter of declaration (*littera declaratoria*) was a very common document produced by the papal curia. Petitioners asked the pope for a declaration of legality because some enemy (mostly called *emuli*) might question their conduct. Letters of declaration were sent out by the Chancery as well as by the Penitentiary.¹⁴ The *Repertoria* published by the German Historical Institute in Rome, the *Repertorium Poenitentiariae Germanicum* as well as the *Repertorium Germanicum*, contain some documents of this kind. Common to all of them is the fact that the expert of the offices in matters of canon law (the *auditor*) had to check them before the final decision. In both of our cases this expert was a certain Antonius de Grassis,¹⁵ who gave his canonical expertise (*Videat eam A. de Grassis*), which resulted in the commission to the local bishop (*committatur ordinario*) to study the case.

In both cases his decision the same and also remarkable with regard to its canonical implications. The *auditor* gave precise instruction to the local bishops to whom he committed the respective cases: In the Constance case he asked to summon Henry, the impotent husband, and other witnesses before the episcopal court. The bishop might rule in favour of Anna (*declaret ut petitur*) only if, after a thorough inquiry, it would be evident that they had continuously lived together for three years after their wedding (*post contractum matrimonium per triennium continuum simul cohabitarunt*) and that they had tried to have sex with each other (*et operam carnali copule dederint*) and if seven witnesses, relatives or persons of good repute from both sides of the couple, would confirm under oath that Anna and Henry had never “become one flesh” (*utroque cum septima manu propinquorum vel vicinorum bone fame, si propinqui desinantur, iure iurando firmante, quod per carnis copulam effecti non sunt una caro*).

Basically the same decision was made in the Italian case seven years earlier, but adjusted to the special situation of the newlywed couple. While the German couple had obviously already lived together for quite some time, the bishop of Gaeta in the other case was asked to order Antonius and Marchisella to live together for three years (*cohabitare per triennium*) unless his impotence could be proved otherwise (*si frigiditas ipsius vere probari non potest*). Only after this period should he summon

¹⁴ See Göller, *Pönitentiarie* I/1, 179-181 as well as Schmugge, Hersperger and Wiggenhauser, *Supplikenregister*, 175-185.

¹⁵ Antonius de Grassis, *iuris utriusque doctor* and canon of Bologna, acted as *auditor* since 1462. He checked the supplications for the *litterae declaratoriae* throughout the pontificate of the Popes Sixtus IV and Innocent VIII. In 1485 he became bishop of Tivoli. See Bruno Katterbach, *Referendarii utriusque signaturae*, Studi e Testi 55 (Città del Vaticano: Biblioteca Apostolica Vaticana, 1931, reprint 1994), 57 and Conrad Eubel, *Hierarchia Catholica Medii Aevi*, vol. II (Münster: Regensburg, 1914), 251.

Antonius before his court for the same procedure as in the German case: Seven witnesses from both sides had to swear that Antonius and Marchisella had never “become one flesh”, that is, had never had sexual intercourse (*quod numquam per carnis copulam effecti sunt una caro*). Once the bishop had established the truth, he might rule in favour of Marchisella’s request (*declaret ut petitur*).

CANONISTIC IN THE PENITENTIARY DOCUMENTS

Both supplications clearly followed canonical texts very closely, citing Gratian and the papal decretals. Marchisella (or rather her *procurator*) stressed the circumstance of her husband being impotent by nature (*propter frigiditatem nature*), a clause that cites Gratian (*Causa* 33, *Quaestio* 1, Canon 2). The supplication further mentioned that she wished to remarry and to have children (*cupiatque ... mater effici liberorum*), referring implicitly to Gratian (*Causa* 33, *Quaestio* 1, Canon 2) and to *Liber Extra* (4.15.7) and through the phrase *ad secunda vota convolare* again to *Liber Extra* (4.15.5). Anna’s proctor even quoted a *regula iuris*, which otherwise did not appear in the discussion of matrimonial dispensation (*cessante causa ... cessat effectus*).¹⁶ He also underlined that Henry assured to be impotent and unable to make Anna a mother (*mater effici liberorum*).

The decision proposed by the *auditor* Antonius de Grassis followed the canonical texts very closely. In both commissions to the *ordinarius loci*, Antonius cited word by word the same important decretal from *Liber Extra* (4.15.5), attributed to Celestine III, where the pope ordered a three-year probation and afterwards the oath of seven relatives or neighbours (... *si frigiditas ... probari non possit, cohabitare per triennium; quo elapso si ... quod numquam se invicem cognoscerunt, [utroque instead of ambo] cum septima manu propinquorum vel vicinorum bone fame, si propinqui defuerint, tactis sacrosanctis evangelii iureiurando [firmante instead of dicat] quod numquam per carnis copulam effecti [sunt instead of fuissent] una caro*). The rule to make the couple live together for three years before taking a decision about impotence was set by Pope Celestine III and later confirmed by Honorius III.¹⁷ The three-year-interval before a decision in an impotence case could be judged was also adopted by Spanish synodal legislation, as can be seen in the statutes of the diocesan synods of Leon in 1303 and Segovia in 1325.¹⁸

¹⁶ See X 2.24.26, X 2.28.60, X 3.34.7, Extrav. comm. 5.7.4. See also Gratians *Decretum* D 61 c.8 d.G. post § 2: *Sciendum est, quod ecclesiasticae prohibitiones proprias habent causas, quibus cessantibus cessant et ipsae*; Friedberg, *Corpus*, vol. I, col. 230.

¹⁷ X 4.15.5, 7.

¹⁸ See Federico R. Aznar Gil, *La institucion matrimonial en la Hispania cristiana bajomedieval (1215–1563)*, Bibliotheca Salmanticensis, estudios vol. 123 (Salamanca: Publicaciones Universidad Pontificia, 1989), 169–171.

The procedure to call seven witnesses from each side to prove the *impossibilitas coeundi*, that is, that the couple had never been *una caro*, was taken from Gratian (*Causa* 27, *Quaestio* 2 dp, Canon 28 § 3 and *Causa* 33, *Quaestio* 1, Canon 2).¹⁹ Gratian himself had claimed that the doctrine came from Pope Gregory the Great († 603), taking the text from his formal source, Ivo of Chartres' *Decretum* (Book VIII, 178) or the same author's *Panormia* (Book VI, 115), where the text was attributed to Pope Gregory.²⁰ The cited text did not, however, go back to Pope Gregory, but to a letter of Hrabanus Maurus († 856) directed to Bishop Heribald of Autun.²¹ It was later entered into Regino of Prüm's († 915) canonical collection and Burchard of Worms' *Decretum* early in the eleventh century under the *inscriptio*: *Ex epistolis Gregorii*. From there, the text passed into Ivo's collections, his *Decretum* and the *Panormia*. The text in Burchard's *Decretum* reads as follows: *Quod si mulier causatur, et dicit: Volo mater esse et filios procreare, uterque eorum septima manu propinquorum tactis sacrosanctis reliquiis iureiurando dicat, ut numquam per commisionem carnis coniuncti una caro effecti fuissent. Tunc videtur mulierem secundas posse contrahere nuptias*.²² The requirement of seven witnesses in a matrimonial trial undoubtedly did not come from Roman law but from the Germanic legal tradition ("Übersiebnen") and had no roots in either Roman or canon law or in the *Ius commune*.²³ It made its way into canon law (and the practice of dispensation) through Gratian, who erroneously accepted the practise on the basis of the ascription to Gregory the Great.

Although somewhat shorter, the *auditor's* decision in the German case was based on *Liber Extra* (4.15.5 and partially also on 4.15.7 – *per triennium continuum simul cohabitarunt*). The last-mentioned decretal was in turn based on Tancred's († around 1236) arguments in his *Summa de matrimonio*, which Pope Honorius III followed.²⁴ The requirement of at least three years of cohabitation on the other side came from Roman law and can be found in the *Codex Iustiniani* (*Codex* 5.17.10 and *Novella* 22 c.6). Rufinus († before 1192) in his *Summa decretorum* and Bernhard of

¹⁹ Friedberg, *Corpus*, vol. I, col. 1071 and 1149.

²⁰ See Jean Werckmeister, "Le Traité du mariage de Gratien," Diss. (Strasbourg: Université, 1997); *idem*, "Les deux versions du 'De matrimonio' de Gratien," *Revue de Droit Canonique* 48/2 (1998), 301-316; Jean Gaudemet, "Les sources du Décret de Gratien," *Revue de Droit Canonique* 48/2 (1998), 247-261.

²¹ Migne, *Patrologia Latina*, vol. 110, 491A, c. 29. See Jean Gaudemet, *Il matrimonio in occidente* (Torino: SEI, 1989), 178-180, and Raimund Kottje, *Die Bussbücher Halitgars von Cambrai und des Hrabanus Maurus*, Beiträge zur Geschichte und Quellenkunde des Mittelalters 8 (Berlin: de Gruyter 1980), 206, 208, 211.

²² *Decretum*, book IX, chapter 44; Migne, *Patrologia Latina*, vol. 140, 822.

²³ See Ekkehard Kaufmann, "Übersiebnen," in *Handwörterbuch zur deutschen Rechtsgeschichte*, vol. V (1998), 408. Dieter Werkmüller, "Handhafte Tat," in *ibidem*, vol. I (1971), 1965-1973.

²⁴ Löffler, *Störung*, 354.

Pavia (†1213) seem to have referred to this regulation even before Pope Celestine III.²⁵ In the German case the seven witnesses from each side were also requested, just as in Marisella's supplication. To decide in cases of impotence the oath of seven relatives and the provision of living together for three years ("Siebenhändereid" and "Triennialprobe" in Sägmüller's terminology) were in use from the twelfth century until 1917, when the new code of canon law was introduced.

CONCLUSIONS

To sum up the information given in the two cases from the registers of the Papal Penitentiary, we immediately become aware of the care and caution with which the responsible clerics proceeded when deciding the requests of two women asking for permission to enter into a new marriage on account of their first husbands' impotence. As Brundage justly stated, "petitions for dissolution of marriages on the grounds of impotence presented formidable problems in the law of evidence..."²⁶ With ecclesiastical courts admitting sworn testimony and the examination by midwives for women as well as for men as early as the thirteenth century, it seems that some kind of external evidence was required. The guidelines for the Papal Penitentiary in the later Middle Ages were thus the following: From the late twelfth century onwards the couple was required to stay together for at least three years and then, with the help of seven witnesses, prove that they had never been "one flesh."

Our cases evidently show that Gratian's theory of marriage, stressing the importance of sexual consummation against the consensual theory preferred by theologians and quite a few decretalists, "continued to operate long after it was scrapped in theory."²⁷ Moreover, the argument of *proles* seems to have been very important for both petitioners, as the wish to become a mother (*mater effici liberorum*) was the basis for requesting a divorce. Obviously, their proctors had used this argument as a convincing topos in their supplications, because it was a standard argument in many similar petitions throughout the fifteenth century.²⁸

Finally it must be stressed that couples asking for divorce because of impotence did not only address the Penitentiary. Such supplications also crop up in the documents of the Papal Chancery and in episcopal registers, if less frequently. To mention just a few examples, first from the Chancery: Johanna, a wife from Liège, took her husband Wilhelmus Reyneri de Lymen, also from the diocese of Liège, to

²⁵ Compilatio II 4.9.3. See Löffler, *Störung*, 353.

²⁶ Brundage, "Impotence," 420.

²⁷ Brundage, "Impotence," 422.

²⁸ See, e.g., *RPG* I, 1; *RPG* IV, 231; *RPG* V, 2140, 1655, 2128, where a man used this argument to become *pater liberorum*.

the papal court *propter impotentiam* and asked for a dispensation to enter into a second marriage.²⁹ Episcopal courts seem to have ruled on divorce on the grounds of impotence as well: A couple from the diocese of Trier in Germany, who wanted to get married in 1456, declared in a supplication to the Penitentiary that the woman had been divorced from her former husband *per ordinarium propter impotentiam ipsius*.³⁰ In another case, Anna, a woman from Augsburg, declared in a petition presented to the Penitentiary in 1464 that she had been separated from her first husband because of his impotence by the local *officialis*.³¹ A similar reference is found in a supplication coming from Münster, where the petitioner spoke of minutes made during a process of impotence.³² An explicit reference to an episcopal court decision in matters of impotence (here called *frigiditas et impotentia coeundi*) is mentioned in a supplication from the diocese of Speyer in Germany dating from 1474.³³

As there was never a conflicting jurisdiction between the popes' claim for *plenitudo potestatis* and the competences of episcopal courts in matters of impotence, the latter were free to decide on the basis of Gratian's *Decretum* and the papal decretals of the thirteenth century. Both courts, the Penitentiary and diocesan *officiales*, acted by and large on the grounds of this legislation, divorcing couples who had turned to the papal or episcopal court in matters of impotence, taking into consideration in the same way the needs of the men and women involved and the aim of any marriage, the *procreatio prolis*.

²⁹ *Repertorium Germanicum* VII (Calixtus III 1455–1458), ed. Ernst Pitz (Tübingen: Niemeyer, 1989), 1235 (1457).

³⁰ *RPG* III, 1772.

³¹ *RPG* IV, 820. Its interesting that in the *signatura* the Penitentiary officer stated that he did not accept the divorce (*non approbando divortium*). It remains unclear what the intention of this clause was. In another supplication from 1469 a couple from the diocese of Münster referred to a similar procedure in an episcopal court; *RPG* V, 2112.

³² *RPG* V, 2112 (1469): ...*processu de et super [impotentiam] habito*.

³³ *RPG* VI, 377: *Petrus Korman et Katherina propter frigiditatem Petri et impotentiam coeundi per ordinarium eorum servatis servandis per suam diffinitivam sententiam...ab invicem divortiatii fuerant*.

APPENDIX

1. The Italian case (ASV, *Penitenzieria Ap.*, *Reg. Matrim. et Div.* vol. 25, fol. 136r.):

[*Exponitur pro parte*] *Marchiselle Pulcis mulieris Gaietan., quod ipsa olim cum quodam Antonio de Morrazo laico Terracinen. matrimonium per verba de presenti contraxit. Deinde Antonius post contractum matrimonium cum ea iacuit et propter frigiditatem nature quam patitur huiusmodi matrimonium consumare non potuit et ad illud consumandum ad presens impotens existit. Cum dicta exponens contraxerit matrimonium ignorans penitus ipsius Antonii frigiditatem cupiatque ad secunda vota convolare et mater effici liberorum, a nonnullis tamen simplicibus [et iuris ignaris et ipsius exponentis forsitan emulis asseritur ipsam secundum matrimonium contrahere non posse, sed dicto Antonio astrictam fore], ad ora igitur talium obstruenda: Petit exponens [litteram declaratoriam] ipsam premissorum occasione eidem Antonio nullo vinculo matrimoniali astrictam fore, sed cum quocumque alio viro alias sibi nullo gradu prohibito coniuncto matrimonium libere contrahere et in eo licite remanere posse ut in forma.*

Fiat ut infra A. episcopus Lunen. regens.

Videat eam A. de Grassis.

Committatur ordinario, qui mandet exponenti, ut cum prefato Antonio, si frigiditas ipsius vere probari non potest, cohabitaret per triennium; quo elapso si vocatis dicto Antonio et aliis evocandis sibi legitime constiterit, quod numquam se invicem cognoscerunt, utroque cum septima manu propinquorum vel viciniorum bone fame, si propinqui defuerint, tactis sacrosanctis evangeliis iureiurando firmante, quod numquam per carnis copulam effecti sunt una caro, et de aliis expositis, declaret ut petitur.

Rome apud s.Petrum 10. iunii 1477

2. The German case (ASV, *Penitenzieria Ap.*, *Reg. Matrim. et Div.* vol. 33, fol. 172v = RPG VI, 3807.):

[*Exponitur pro parte*] *Anne Murerin de Stienigen mulieris Constant. diocesis, quod ipsa olim credens quendam Henricum Schmiger laicum Constant. diocesis esse potentem et habilem et idoneum ad actum coniungalem exercendum et exequendum et cupiens misericorditer mater effici liberorum cum hac conditione et intentione matrimonium per verba legitima de presenti cum dicto Henrico asserentem se ad id esse potentem*

licet non esset publice contraxit, sed dictus Henricus ad id impotens illud cum dicta exponente consumare non potuit. Cum autem cessante causa et conditione huiusmodi cessat effectus dictaque exponens, que iuvenis est, non possit contineri et cupiat alicui alteri potenti viro matrimonialiter copulari et mater effici liberorum ut prefertur, a nonnullis tamen simplicibus et iuris ignaris ac ipsius exponentis forsan emulis asseritur eandem exponentem occasione premissorum dicto Henrico vinculo matrimoniali astrictam et obligatam esse et propterea matrimonium cum aliquo alio viro libere contrahere et in eo postquam contractum esset licite remanere non posse prolemque suscipiendam exinde illegittimam fore, ad ora igitur talium et aliorum sibi forsan super hoc infuturis obloqui volentium emulorum obstruenda: supplicatur de [littera] declaratoria ipsam propter premissa dicto Henrico nullo vinculo matrimoniali astrictam seu obligatam esse, sed matrimonium cum aliquo alio viro libere contrahere et in eo postquam contractum fuerit licite remanere posse prolemque exinde susceptam legitimam fore ut in forma.

Fiat ut infra Julius episcopus Brictonorien. regens.

[Videat eam A. de Grassis].

Committatur ordinario et si vocatis vocandis Henrico predicto et aliis evocandis sibi legitime constiterit, quod exponens et Henricus post contractum matrimonium per triennium continuum simul cohabitarunt et operam carnali copule dederint utroque cum septima manu propinquorum vel vicinorum bone fame, si propinqui desinantur, iure iurando firmante, quod per carnis copulam effecti non sunt una caro et de aliis expositis, declaret ut petitur.

Rome 24. Februarii 84

VAGRANTS AND APOSTATES



... MONASTERIUM IPSUM (SINE LICENTIA) EXIIT
A FAMILIAR IMAGE FOR THE FIFTEENTH-CENTURY DIOCESES
OF PASSAU AND SALZBURG?

Gerhard Jaritz

The phenomena of ‘stability’ and ‘mobility’ played an important role in any medieval discourse about monastic space. The highest number and largest variety, however, can be traced in the sources of the fifteenth century.

Concentrating on the dioceses of Passau and Salzburg, this contribution will deal with the role of vagrant monks and apostates in the supplications to the Apostolic Penitentiary¹ from the thirties to the eighties of the fifteenth century, comparing it with the respective source evidence of some individual religious houses, monastic statutes and General Chapter decisions. I will trace contexts for the general or ‘global’ discussion of the phenomenon and the ‘local’ situation that concerned individual areas and communities.² Thus, the information taken from the Penitentiary records can be recognised and evaluated in wider contexts and interrelations, of quantity as well as quality.³

¹ Concerning apostasy and *transitus* in the registers of the Apostolic Penitentiary see, for the German areas, Ludwig Schmugge, Patrick Hersperger, and Béatrice Wiggenhauser, *Die Supplikenregister der päpstlichen Pönitentiare aus der Zeit Pius' II.*, Bibliothek des Deutschen Historischen Instituts in Rom 84 (Tübingen: Max Niemeyer Verlag, 1996), 117-125 (henceforth: Schmugge, *Supplikenregister*); Milena Svec, “Apostasie und Transitus in der Registerüberlieferung und in *partibus*,” in *The Roman Curia, the Apostolic Penitentiary and the Partes in the Later Middle Ages*, ed. Kirsi Salonen and Christian Krötzel, Acta Instituti Romani Finlandiae 28 (Rome: Institutum Romanum Finlandiae, 2003), 184-200 (henceforth: Svec, “Apostasie”).

² Concerning the problem generally, see Laurent Mayal, “Du vagabondage à l’apostasie. Le moine fugitif dans la société médiévale,” in *Religöse Devianz: Untersuchungen zu sozialen, rechtlichen und theologischen Reaktionen auf religiöse Abweichungen im westlichen und östlichen Mittelalter*, ed. Dieter Simon, Studien zur europäischen Rechtsgeschichte 48 (Frankfurt/Main: Klostermann, 1990), 121-142 (henceforth: Mayal, “Vagabondage”). For the German area, see, e. g., Gerd Heinrich, “Klosterflucht und Klosterzucht im 15. Jahrhundert,” *Jahrbuch für die Geschichte Mittel- und Ostdeutschlands* 12 (1963), 195-206; Thomas Füser, *Mönche im Konflikt: Zum Spannungsfeld von Norm, Devianz und Sanktion bei den Cisterciensern und Cluniacensern (12. bis frühes 14. Jahrhundert)*, Vita regularis. Ordnungen und Deutungen religiösen Lebens im Mittelalter 9 (Münster, Hamburg and London: Lit Verlag, 1990), 260-324; for England, Christopher Harper-Bill, “Monastic Apostasy in Late Medieval England,” *Journal of Ecclesiastical History* 32 (1981), 1-18; Francis Donald Logan, *Runaway Religions in Medieval England (c. 1240-1540)* (Cambridge: Cambridge University Press, 1996); for Italy, Ora-

Checking, for instance, the statutes of the General Chapters of the Cistercians and the Carthusians that refer to *monachi vagantes* and problems they raised, one can trace an obvious development. Generally, these monks were clearly seen as destabilising factors of monastic life.⁴ Until the end of the fourteenth century and again from the beginning of the sixteenth century onwards one occasionally comes across statutes condemning the migration of monks into the secular world. Their number, however, was rather low.⁵ One was aware of the problem, but it did not seem to be of major importance.

In the first half of the fifteenth century one comes across a rising number of statutes on *monachi vagantes* that concerned entire orders; moreover, increasing numbers of cases of individual monks were also treated by the General Chapters. These cases are almost regularly dealt with in a similar way: A monk had left his community and had provoked scandal, either in another monastery or in the secular world. The Chapter ordered him to be sent back to the monastery where he had made his profession, and the abbot there was advised to handle the situation.⁶ The late medieval Cistercian and Carthusian General Chapter statutes compared such mobile monks with the *gyrovagi* of the rule of Saint Benedict: ... *semper vagi et numquam stabiles, et proprii voluntatibus et gulae illecebris servientes* ...⁷

zio Condorelli, *Clerici peregrini. Aspetti giuridici della mobilità clericale nei secoli XII-XIV* (Rome: Il Cigno Galileo Galilei, 1995).

³ The source material of the Penitentiary used here are the entries from the dioceses of Salzburg and Passau in the registers published in the *Repertorium Poenitentiarie Germanicum*, vol. 1: 1431-1447 – 6: 1471-1484, ed. Ludwig Schmugge et al. (Tübingen: Max Niemeyer Verlag, 1996-2005) (henceforth: *RPG*).

⁴ See, e. g., Kaspar Elm and Peter Feige, "Der Verfall des zisterziensischen Ordenslebens im späten Mittelalter," in *Die Zisterzienser. Ordensleben zwischen Ideal und Wirklichkeit*, ed. Kaspar Elm et al., Schriften des Rheinischen Museumsamtes 10 (Bonn: Rheinland-Verlag, 1980), 238; Gerhard Jaritz, "Monastische Kommunitäten und räumliche Mobilität in Mittelalter und Frühneuzeit," in *Migration in der Feudalgesellschaft*, ed. Gerhard Jaritz and Albert Müller, Schriften zur Historischen Sozialwissenschaft 8 (Frankfurt am Main and New York: Campus Verlag, 1988), 159-161 (henceforth: Jaritz, "Monastische Kommunitäten").

⁵ Jaritz, "Monastische Kommunitäten," 160; *idem*, "Cistercian Migrations in the Late Middle Ages," in *Goad and Nail*, ed. E. Rozanne Elder, Studies in Medieval Cistercian History 10 (Kalamazoo: Cistercian Publications, 1985), 192 (henceforth: Jaritz, "Cistercian Migrations").

⁶ See Jaritz, "Cistercian Migrations," 192.

⁷ *Regula Sancti Benedicti*, cap. 1, 10-11. Cf. a Carthusian General Chapter decision from 1483: *Monemus omnes Priores et personas Ordinis ut de caetero sint circumspecti et aduerti ne accomodent pecunias aut alia quaecumque dona Ordinis nostri fugitiuis aut gyrovagis; quod si contrarium fecerint, nihil inde se recepturos sperant a Prioribus et domibus unde sunt professi* [The Chartae of the Carthusian General Chapter 1475-1503 (MS. Grande Chartreuse 1 Cart. 14), ed. John Clark, *Analecta Cartusiana* 100:31 (Salzburg: Institut für Anglistik und Amerikanistik, Universität Salzburg, 1999), 32]; or the Cistercian decisions from 1190 [*Statuta Capitulum Generalium Ordinis Cisterciensis ab anno 1116 ad annum 1786*, tomus 1: *ab anno 1116 ad annum 1220*, ed. Josephus-Maria Canivez, Bibliothèque de la Revue d'Histoire Ecclésiastique, fasc. 9 (Louvain: Bureaux de la Revue Ecclésiastique, 1933), 130, n. 1190:60 (henceforth: Canivez, *Statuta*); *De Haymone monacho Longivadi qui factus est falsarius litterarum et gyrovagus* ...; and from 1432 [Canivez, *Statuta*, tomus 4: *ab anno 1401 ad annum 1456*, Bibliothèque de la Revue d'Histoire Ecclésiastique, fasc. 12 (Louvain: Bureaux de la Revue Ecclésiastique, 1936),

An even more decisive change in the number of General Chapter decisions regarding migrating monks can be seen from about the mid-fifteenth century. From the 1450s to the 1470s, almost every Cistercian General Chapter makes mention of monks roaming through the world.⁸ The number of individual cases also increased further. The problem was obviously not so much the members of the community leaving the monastery and Order, but such monks moving from one monastery to another. It is often repeated that only really serious reasons might allow sending a monk to another house of the Order. Disputes inside communities should not be solved by dismissing monks who had picked a quarrel. If a monk was sent to another community for good reason and could not be kept there, he should only be sent back and not further on to a third community. Sometimes, the statutes go into great detail.⁹ The Melk Reform of the Benedictines also dealt with such vagrant monks and the problems they had caused in their monasteries.¹⁰

Such a situation must have meant that the mobility of members of monastic houses in the fifteenth century represented a serious and intensively discussed phenomenon and problem. The cases that came to and were treated by the Apostolic Penitentiary were, therefore, and in this general context, obviously not special or exceptional. Such mobility and migration or, at least, the normative discourse about them, must be

371-372]: ... et inveniuntur monachi Ordinis incomposite per mundum discurrentes, et tamquam girovagi ad monasterium cum habitibus laceratis mendicando transeuntes (n. 1432:9); a monk from Villa Dei, ... qui tamquam girovagus et apostata per civitates et castella discurrens cum armatis et aliis societatibus inhonestis inhoneste conversari non veretur, multaque dignoscitur perpetrasse scandala, ex quibus Ordinis fama plurimum denigratur ... (n. 1432:11). See also Mayal, "Vagabondage", 126; Otto Grillnberger, "Kleinere Quellen und Forschungen zur Geschichte des Cistercienser-Ordens," *Studien und Mittheilungen aus dem Benedictiner- und dem Cistercienser-Orden* 16 (1895), 602 (henceforth: Grillnberger, "Kleinere Quellen"); Jaritz, "Monastische Kommunitäten," 160.

⁸ For this and the following, see Jaritz, "Cistercian Migrations," 192.

⁹ See, e. g., a statute from 1457 [Canivez, *Statuta*, tomus 5: *ab anno 1457 ad annum 1490*, Bibliothèque de la Revue d'Histoire Ecclésiastique, fasc. 13 (Louvain: Bureaux de la Revue Ecclésiastique, 1937), 9]: *Praesens generale Capitulum cupiens providere vagorum monachorum discursui, districte inhibet abbatibus Ordinis universi, ne hospitem ad se missum alibi remittat nisi ad proprium abbatem aut visitatorem seu reformatorem* (n. 1457: 48).

¹⁰ See, e. g., from 1452, the *Copia carte date monasteriis visitatis in visitatione generali anno Domini millesimo quadringentesimo quinquagesimo secundo et dande pro monasteriis in futurum visitandis* [Meta Niederkorn-Bruck, *Die Melker Reform im Spiegel der Visitationen*, Mitteilungen des Instituts für Österreichische Geschichtsforschung, Ergänzungsband 30 (Vienna and Munich: R. Oldenbourg Verlag, 1994), 227 (henceforth: Niederkorn-Bruck, *Die Melker Reform*): *Ne monachi egrediantur sine licencia monasterium. Item, quia teste beato Benedicto vagari extra monasterium non expedit animabus monachorum, igitur monachus huius loci raro licencia egrediendi de monasterio concedatur. Nec quisquam illam obtineat, nisi ex evidenti utilitate aut necessitate abbati exposita per eum approbata. Egressuro vero per abbatem terminus redeundi prefigatur, infra quem si cessante legitimo impedimento venire neglexerit, taliter, ut ceteri metum habeant, puniatur. Exeuntes vero de monasterio vestibus utantur religiosis pro via deputatis aut talibus, quales in monasterio deferre consueverunt*. See also Franz Thoma, "Die Briefe des Petrus von Rosenheim an Abt Kaspar Ayndorffer von Tegernsee während der Klosterreform in Südbayern, 1426-1431," *Oberbayerisches Archiv für vaterländische Geschichte* 67 (1930), 17-18, note 8; Niederkorn-Bruck, *Die Melker Reform*, 79-80.

seen as a matter of normal course in fifteenth-century monastic life. Nevertheless, there is considerable variety with regard to the local situation, the background, purpose and evaluation, and the types of discourse that the different sources contain.

Concerning the two dioceses of Salzburg and Passau, one comes across a number of cases that found their way to the Penitentiary. In the registers from Pope Eugen IV (1431–1447) to Pope Sixtus IV (1471–1484), the number of supplications by monks and nuns from the two dioceses is not extremely high, but one may see the phenomenon as a kind of continuous concern and problem that had to be handled. It was mainly the monk who had left his monastery without being authorised and stayed in the secular world, or stayed there too long, or even had left or wanted to leave the Order who was a problem. In the mentioned years, there are 29 cases of monks and nuns in religious communities of the diocese of Salzburg¹¹ and the same number from the diocese of Passau.¹² Often, the entry follows the set phrase that a monk from a certain community *monasterium ipsum absque licentia superioris exiuit* ...,¹³ either doffing his habit (... *habitu derelicto* ...¹⁴) or keeping it (... *habitu retento* ...¹⁵). Then he had roamed through the secular world or joined another monastery of the same or another order.¹⁶ A number of cases deal with apostates who had left monastic life completely.¹⁷ Most cases come from Benedictine communities, but also from the Austin Canons, Cistercians, Premonstrat-

¹¹ RPG I, 497 (1440); II, 54 (1449); II, 155 (1449); II, 335 (1450); II, 522 (1450); II, 523 (1450); II, 705 (1450); II, 912 (1452); III, 13 (1455); III, 334 (1456); III, 365 (1456); III, 417 (1457); III, 486 (1457); III, 516 (1457); IV, 1058 (1459); IV, 1059 (1459); IV, 1350 (1461); V, 956 (1465); V, 985 (1465); V, 1104 (1466); V, 1154 (1466); V, 1518 (1468); V, 1588 (1468); V, 1663 (1469); V, 1721 (1469); VI, 2325 (1473); VI, 2440 (1475); VI, 2491 (1475); VI, 2740 (1477).

¹² RPG I, 499 (1440); II, 109 (1450); II, 170 (1450); II, 255 (1450); II, 741 (1450); II, 998 (1453); III, 220 (1455); III, 240 (1456); III, 241 (1456); III, 297 (1456); III, 560 (1458); IV, 1064 (1459); IV, 1224 (1460); IV, 1483 (1462); IV, 1497 (1462); IV, 1525 (1463); IV, 1601 (1463); IV, 1721 (1464); V, 942 (1465); V, 943 (1465); V, 1147 (1466); V, 1061 (1464); V, 1306 (1466); V, 1341 (1467); V, 1630 (1469); VI, 2199 (1473); VI, 2320 (1474); VI, 3143 (1481); VI, 3350 (1483).

¹³ For the German areas under Pope Pius II (1458–1464), generally, see Schmugge, *Supplikenregister*, 122–123.

¹⁴ See, e. g., an Austin Canon from St. Andrä/Lavanttal in Carinthia who ... *olim mon. ipsum illicentiatu habitu et ord. derelictis exiuit per mundum vagando et sic ligatus div. celebravit off.* ... [RPG V, 1518 (1468)].

¹⁵ See, e. g., an Austin Canon from Reichersberg in today's Upper Austria who ... *mon. illicentiatu habitu retento* ... [RPG IV, 1601 (1463)].

¹⁶ See, e. g., the case of a monk from the Premonstratensian house of Griffen in Carinthia who had changed to the Augustine Hermits of Völkermarkt, also in Carinthia, and ... *exponit, quod olim ex quadam animi levitate mon. sine lic. exiuit habitu et ord. derelictis et conv. o. fr. berem. s. Aug. in Volkenmarck intravit et habitum or. assumpsit et plures an. ibidem stetit professione facta; et sic ligatus div. celebravit off.: de absol. et de disp. et de lic. ad primum suum ord. redeundi* ... [RPG III, 13 (1455)]. An Augustine Hermit from Korneuburg in Lower Austria ... *conv. illicentiatu habitu et ord. derelictis et div. off. se immiscuit et al. habitum s. Juliani assumpsit* ... [RPG IV, 1721 (1464)].

¹⁷ See, e. g., the case of a Benedictine monk from the Bavarian house of Seon in the diocese of Salzburg who ... *per 13 an. corona et habitu relictis et horis canonicis neglectis ab eodem ord. apostatarit et in seculo purus laic. incessit*. [RPG III, 516 (1457)].

ensians, Carthusians, Mendicants, and so on.¹⁸ The monks applied to the Penitentiary to be absolved from their excommunication and to be allowed to return to their communities,¹⁹ to go to or stay in another monastery of the Order,²⁰ or to join another order. The latter case is, for instance, dealt with in the supplication of a Styrian Minorite from Judenburg in 1469 who first left his community and later wanted to join the Carthusians, ... *ob spem melioris vitae*.²¹ A number of cases, however, touch on monks who had not yet left their community but had the intention to do so and sent a supplication to the Penitentiary.²² It also could happen that a monk had received a license from his superior to leave his monastery for a certain time but came back too late.²³

In some cases, the monks' unauthorized leaving of the monastery or their request for a license to leave is stated to have happened for specific reasons, as, for instance, they intended to study at a university,²⁴ or wanted to go to Rome for the 1450

¹⁸ For the whole German area in the period of Pope Pius II, see Schmugge, *Supplickenregister*, 118.

¹⁹ See, e. g., a Benedictine from the diocese of Passau who ... *mon. sine lic. exivit et ad seculum rediit, in quo per certum temp. remansit et div. off. se immiscuit; de absol. ab excom. sent. et de disp., ut ad d. mon. redire posit.* [RPG IV, 1064 (1459)].

²⁰ See, e. g., the case of the Cistercian monk of Fürstenzell (Bavaria) who ... *mon. illicitatus exivit habitu derelicto; de absol. ab excomm. sent. et de disp., ut ad al. mon. d. ord. et observ. se transfer. Posit.* [RPG IV, 1525 (1463)]; a monk from the Lower Austrian Cistercian house of Zwettl ... *mon. illicitatus exivit habitu retent; de absol. ab excom. sent. et lic. se transfer ad al. mon. d. ord. et observ.* [RPG IV, 1483 (1462)].

²¹ He ... *illicentius exivit et ad R. cur. venit ac habitum animo apostandi dimisit et sic ligatus div. celebravit off. irreg. maculam contrahendo; cum autem exp. ad conv. et ord. propter certas et rationabiles causas non tornare valeat cupiatque ob spem melioris vite o. Cartus. intrare; petit absolvi secumque super irreg. dicto modo contracta dispensari ac eidem, ut dictum o. Cartus. intrare possit, lic. impartiri.* [RPG V, 1721 (1469)]. Concerning the general problems of Carthusians with monks from other orders, mendicants in particular, wanting to join one of their communities see, e. g., Gerhard Jaritz, "Transeuntes ad alium Ordinem." The Position of Carthusians and Cistercians," *Medium Aevum Quotidianum* 37 (1997), 32-39.

²² See, e. g., the case of a Benedictine monk from Seitenstetten in Lower Austria: ... *ex certis rationabilibus causis c. animi sui quiete ac sana conscientia in d. mon. diutius non potest remanere; de lic., ut ad al. mon. eiusdem ord. se transferre valeat.* [RPG II, 998 (1453)]; or of a Benedictine monk from St. Paul in Carinthia: ... *cum quiete animi sui et sana conscientia in predicto mon. remanere non potest; de lic. se transferendi ad aliud mon. eiusdem ord.* [RPG V, 985 (1465)].

²³ See, e. g., a Benedictine monk from the Upper Austrian house of Kremsmünster who ... *olim a suo superiori exeundi dictum mon. lic. per triennium obtinuit, quem term. per duos menses vel circa transgressus est, quare excom. sent. incurrit.* [RPG V, 1630 (1469)].

²⁴ See, e. g., the case of a monk from the Benedictine house of Admont (Styria) who ... *olim absque superioris lic. in universitate Erforden. per biennium vel circa studuit et sic ligatus missas celebravit.* [RPG V, 1154 (1466)]; of a Benedictine monk from St. Lambrecht (Styria) who ... *pluries a suo abb. lic. petivit, ut ipsum ad stud. dimitteret, quod facere recusavit; et paulopost lic. petivit, ut ipsum ad aliquem locum dimitteret, quod d. abb. fecit; qui exponens habita d. lic. ad R. cur. ivit pro obtin. lic. ad stud., nunc autem certis de causis ad d. mon. redire nolit.* [RPG IV, 1058 (1459)]; see the continuation of the latter case, edited in RPG IV, 1059. Concerning this instance of the monk from St. Lambrecht, see also Ludwig Schmugge, "Verwaltung des Gewissens: Beobachtungen zu den Registern der päpstlichen Pönitentiarie," *Rivista internazionale di diritto comuni* 7 (1996), 48; *idem*, "Centro e periferia attraverso le dispense pontificie nel secolo XV," in *Vita religiosa e identità: universalità e particolarismi nell'Europa del tardo Medioevo*, ed. Sergio Gensini (Pisa: Pacini, 1998), 33-34.

Jubilee,²⁵ and so on.²⁶ Often, however, set phrases are used to justify the crime or the request.²⁷

There are also examples to be found in the supplications to the Penitentiary that deal with cases of mobility with the licence of the head of the community. In 1460, a monk from the Bavarian Benedictine house of Formbach left his community with the consent of his abbot to join another monastery. He did so and after some time received another licence from the abbot there to move again to another community. He did not do the latter but engaged in various offences.²⁸

Only a very small number of cases refer to female members of convents who had left or wanted to leave their community.²⁹ One example deals with a nun who wanted to go to a spa because of her health problems.³⁰

If one moves from the general level of the orders and from the Penitentiary entries towards the 'local' levels of evidence from individual monasteries, one may often be disappointed because of the small number of sources, which do not offer the possibility to analyse, to compare or to evaluate. Concerning the chosen area, there are certainly a number of such monasteries from which no or very little evidence has survived that deals with migration and mobility of the members of the communities. But, in other cases, and particularly concerning some houses of the Cistercian Order, the sources are extraordinarily rich and show the important role that such monastic mobility

²⁵ See, e. g., the case of a monk from the Cistercian house of Baumgartenberg (Upper Austria): ... *petita sed non obtenta lic., ut ad iubilium veniret, mon. exiuit et sic ligatus ministravit*. [RPG II, 255 (1450)]; of the Benedictine monk Johannes Hunt from the diocese of Salzburg who ... *exiuit mon. sine lic. et venit ad iubilium*. [RPG II, 523 (1450)]. At the end of the same year, this latter monk asked for the license to move to another monastery of the order: ... *c. quiete illic morari non potest: de lic. transeundi ad al. mon. o. s. Ben* [RPG II, 705 (1450)]. Concerning the Jubilees in the supplications to the Penitentiary see Ludwig Schmugge, "Die Jubiläen von 1450 und 1475 im Spiegel des Archivs der Pönitentiarie," in *I Giubilei nella storia della Chiesa*, Pontificio Comitato di scienze storiche, Atti e documenti 10 (Città del Vaticano: Libreria Editrice Vaticana, 2001), 359-375.

²⁶ For the whole German area under Pope Pius II (1458–1464), see Schmugge, *Supplikenregister*, 119-120.

²⁷ See the cases mentioned in note 22; or the one of an Austin Canon from Salzburg diocese who ... *ex quadam levitate animi illicentiatu exiuit ord. et habitu derelictis et ad seculum est reversus* ... [RPG VI, 2491 (1475)]. See also Svec, "Apostasie," 193-194.

²⁸ *Georgius Conradi presb. prof. b. Marie Formbach o. s. Ben. Patav. dioc. de sui abb. lic. mon. exiuit, ut ad al [mon.] iret, ad quod iuit; et demum de eodem exiuit de abbatis lic. ut ad al. iret eiusdem reg., quod n. fecit, et div. off. se immiscuit* ... [RPG IV, 1224 (1460)].

²⁹ See the example of a Hierosolimitane nun from Vienna who ... *exponit, quod ipsa d. domum illicentiatu exiuit et ad R. cur. venit habitu et ord. penitus derelictis; nunc autem cupit ad suum ovile redire*. [RPG III, 560 (1458)]. Concerning the relation between male and female cases under Pope Pius II for the German areas generally, see Schmugge, *Supplikenregister*, 117-120.

³⁰ A Dominican nun from Graz in Styria: ... *exponitur pro parte, quod ipsa quibusdam infirmitatibus suppressa est, a quibus secundum medicos absque balneis naturalibus liberari non potest: de lic. eundi ad balnea*. [RPG III, 334 (1456)]; see also a similar second supplication of the same nun in RPG III, 486 (1457).

played on the local level in the fifteenth century. They also communicate the variety of types and backgrounds that have to be considered when analysing the material.

The relevant sources that sometimes survive in larger quantities are mainly letters of recommendation that were given to monks leaving for other houses of the Order, often also stating the reasons for their mobility.³¹ These documents especially exist in some mid- and second half of the fifteenth-century letter and charter collections from individual Austrian Cistercian houses: from the Lower Austrian monasteries of Lilienfeld and Wilhering, and from the Styrian Neuberg, in particular.³² The number of recommendation letters alone proves the importance of such monastic mobility for this period in an impressive way. These collections, added to some individual documents, yield about 200 such letters, most from the period between the 1420s and the 1480s. From such numbers one may, I think, also infer the situation in other religious houses.

The structure of the letters is similar: An abbot from A sends a monk of B who came to him from the monastery of C to the community of D and asks the abbot there to keep the monk in his house.³³ The distances between the mentioned monasteries are sometimes large, like, for instance, from Poland to Austria. The reasons given for the moves show remarkable variety, from the general sphere (*propter certas causas* or *diversa gravamina*³⁴) to more detailed descriptions, like

- problems in connection with war: the Hussites, the Turks, the Bohemians, the Hungarians, etc.;
- devastation of a monastery by fire or other natural forces;
- bad harvests or other economic reasons;
- too many monks in the monastery; disputes in the community.³⁵

Altogether, various networks of religious, political, economic, and internal factors have to be taken into account. How familiar the phenomenon of this kind of mobility sometimes must have become is shown by a larger number of such letters that even do not mention any reasons for sending monks away.³⁶ It seems that moving from one religious house of the Order to another one had already become such a regular action

³¹ Jaritz, "Cistercian Migrations," 193.

³² See Valentin Schmidt, "Ein Lilienfelder Formelbuch," *Studien und Mitteilungen aus dem Benedictiner- und dem Cistercienser-Orden* 28 (1907), 392-407 and 577-595; Johannes Hurch, "Aus einem Wilheringer Formelbuche," *ibidem* 11 (1890), 275-289; Grillnberger, "Kleinere Quellen," *ibidem* 16 (1895), 599-610, 17 (1896), 41-59, 256-269 and 437-443; *idem*, "Das Wilheringer Formelbuch 'De kartis visitacionum'," *ibidem* 20 (1899), 127-137 and 482-492; Gerhard Jaritz, "Die Konventualen der Zisterzen Rein, Sittich und Neuberg im Mittelalter (Örtliche Herkunft und ständische Stellung)," I, phil. Diss. (University of Graz, 1973), 108-124. See also Jaritz, "Cistercian Migrations," 191-200.

³³ See Jaritz, "Cistercian Migrations," 193.

³⁴ See, e. g., Grillnberger, "Kleinere Quellen," *Studien und Mitteilungen* 17 (1896), 41-42, n. 33 and 36.

³⁵ See Jaritz, "Cistercian Migrations," 194-195.

³⁶ See, e. g., Grillnberger, "Kleinere Quellen," *Studien und Mitteilungen* 17 (1896), 55, n. 85 and 87.

that there was sometimes no longer a need to explain or give the reason for having given up monastic stability.

* * *

All three mentioned source corpora show that the mobility of monks was a phenomenon that played an important and richly discussed role in the late medieval monastic communities of the dioceses of Salzburg and Passau, as well as on a general level. The discourse about it was more or less always induced by or connected with some situation of crisis. Nevertheless, considerable differences have to be acknowledged with regard to background, purpose, and evaluation, as well as to the types of problem consciousness. One is confronted with a network of attempts to master crises and to regain stability. All of them have to be seen in contexts that connected 'global,' 'local' and 'individual' aspects.

The 'local' recommendation letters show abbots accepting or even furthering monks becoming vagrant by their abbots to reduce various situations of crisis in their own houses. *Monachi vagantes* in this 'local' context seem to have been a kind of necessary evil, often to be supported to keep up or to regain the stability of a monastic community.

The orders, however, saw the *monachi vagantes* as a highly negative phenomenon in general, often independent of the question as to whether this mobility was licensed and furthered by abbots or if it happened unauthorised. In their opinion, it was caused by abuses in monastic life, emphasis on material aspects, and the bad model of some heads of the communities.³⁷ Thus, the orders tried to regain stability by generally prohibiting this kind of monastic mobility.

The Penitentiary entries certainly followed this negative evaluation. One aspect, however, played the most important role and represented the determining factor of particular monks and nuns turning to the Penitentiary: their mobility *sine licentia superioris*, unauthorised leaving of the monastery. Regaining stability in the 'global' context of the Penitentiary, thus, has to be seen as the most individualised level of problem solution.

Comparing numbers, one might come to the conclusion that a smaller number of monks became mobile without authorisation and, therefore, had to ask for papal absolution, versus a larger number who were obviously even supported in leaving their monasteries. For the first group this mobility, in the end, created problems, that is, it meant the step to excommunication. For the second group it was supposed to solve

³⁷ See, e. g., a number of such critical remarks of the Carthusian General Chapters in the first half of the 15th century: Gerhard Jaritz, "Klosteralltag und Welt im Spätmittelalter: Das Beispiel der Kartäuser," in *Kartäuserregel und Kartäuserleben. Internationaler Kongress Stift Heiligenkreuz*, ed. James Hogg, Analecta Cartusiana 113:3 (Salzburg: Institut für Anglistik und Amerikanistik, Universität Salzburg, 1985), 66-67.

problems on the 'local' level by reducing difficulties for individual monastic communities. In any case, 'local' and 'global' scopes were indissolubly intermingled.

MONK, THIEF, ARSONIST:
THE ADVENTUROUS FATE OF A RUNAWAY RELIGIOUS

Milena Svec Goetschi

Was it thoughtlessness, adventurous desire or a certain violent disposition? Half a millennium later we cannot know why a certain Johannes Opser (Oppseer/Opasser¹), a Premonstratensian canon, escaped from the monastery of Weissenau in the diocese of Constance and joined predatory mercenary troops. Two supplications in the Penitentiary registers from the years 1450 and 1451² refer to his escape and his adventurous fate and shall be examined in the course of this article. In one of his supplications, Johannes explains that he was enticed to escape by carelessness and by the cajolery of the devil.³ Not only did Johannes commit apostasy by illicitly abandoning his monastery without permission of his superior, but he subsequently made himself guilty of such misdeeds that only one person could grant him absolution and dispensation – it was *speciali modo* reserved to the pope, in his case Nicholas V.

Interdiction and transgression, order and disobedience, crime and punishment often go together in human history. Not surprisingly monastic communities were also susceptible to temptation; all the more when considering that the persons of the reli-

¹ Although the name Opasser/Oppseer is spelt slightly differently, the first name, origin, order and date of the supplications clearly indicate that the same person is meant. See also Ludwig Schmugge, *Kirche, Kinder, Karrieren. Päpstliche Dispense von der unehelichen Geburt im Spätmittelalter* (Zurich: Artemis und Winkler, 1995), 126-127 (henceforth: Schmugge, *Kirche*). According to Schmugge, complaints about sloppy register entries were an everyday occurrence at the curia. In addition, Italian-speaking writers had difficulties spelling German names correctly. Because the Italian phoneme system does not support the consonant cluster, they inserted vowels so as not to violate the phonotactic constraints of their language.

² *Repertorium Poenitentiarie Germanicum. Verzeichnis der in den Supplikenregistern der Pönitentie vorkommenden Personen, Kirchen und Orte des Deutschen Reiches*, vol. 2.: *Nikolaus V. (1447–1455)*, ed. Ludwig Schmugge, Krystyna Bukowska and Alessandra Mosciatti, indices by Hildegard Schneider-Schmugge and Ludwig Schmugge (Tübingen: Niemeyer, 1999) (henceforth: *RPG II*), 723 (11. 12. 1450 for Johannes Opasser) and 878 (20. 10. 1451 for Johannes Oppseer).

³ *RPG II*, 878.

gious orders were obliged by their vows and strictly committed to obedience, self-abandonment and the *conversio morum*. Religious people had to abandon all secular belongings and relations and die a symbolic death. They were strictly bound to their communities through the *stabilitas loci* and were not allowed to leave the convent without the consent of their superiors.⁴ Escaping from the monastery – and thus re-entering secular life – represented a serious offence against their vows and canon law. A legal means of leaving a religious house was by being sent to another community of the same or a different order (*transitus ad alium ordinem*). But this had to be *artioris vitae causa*, that is, of an equivalent or stricter monastic rule. However, the general trend was that monastic orders tried to limit the *transitus* of members of mendicant or canonical orders. The Carthusians were considered the severest and, therefore, a valid destination order, although they restricted transfers from other orders by resolutions of their General Chapter.⁵ Illicit and illegal changes of convents and monasteries (even caused by ignorance) were treated almost like apostasy.

From the pontificate of Boniface VIII (1295–1303), leaving a monastery without permission and disposing of the habit caused excommunication *latae sententiae* reserved to the pope. The ban became immediately effective (*ipso facto*) by committing the act of apostasy.⁶

Whether from an old, canon or mendicant order, whether monk or nun, common to all religious fugitives was that they were *ipso facto* excommunicated and as *casus reservati* reserved to the pope. Apostates therefore needed a papal letter of grace if they wanted to serve in compliance with the rule.

⁴ As was already stated in the Rule of St. Benedict; Adalbert de Vogüé (ed.), *La Règle de s. Benoît*, vol. II, SC 182 (Paris: Edition du Cerf, 1972), c. LXVII, 662: *De fratribus in viam directis [...] 7 [...] qui praesumpserit claustra monasterii egredi vel quocumque ire vel quippiam quamvis paruum sine iussione abbatis facere*. See also Thomas Füsler, *Mönche im Konflikt. Zum Spannungsfeld von Norm, Devianz und Sanktion bei den Cisterziensern und Cluniacensern (12. bis frühes 14. Jahrhundert)*, *Vita regularis. Ordnungen und Deutungen religiösen Lebens im Mittelalter*, ed. Gert Melville, vol. 9 (Münster: LIT, 2000), 314.

⁵ See, in general, Jean Leclercq, *The Life of Perfection. Points of View on the Essence of the Religious State* (Minneapolis: Liturgical Press, 1961); Douglas Roby, "Philip of Harvenot's Contribution of the Question of Passage from one Religious Order to Another," *Analecta Praemonstratensia* 49 (1973), 69–100; Philipp Hofmeister, "Der Übertritt in eine andere religiöse Genossenschaft," *Archiv für katholisches Kirchenrecht* 1928, 421–422; Gerhard Jaritz, "Transeuntes ad alium Ordinem. The Position of Cistercians and Carthusians in the Middle Ages," *Medium Aevum Quotidianum* 37 (1997), 32–39; Glenn W. Olsen, "Christian Perfection and *transitus ad monasterium* in Lupus of Ferrières' Letter 29," in *Proceedings of the Eight International Congress of Medieval Canon Law, San Diego, University of California at La Jolla, 21–27. August 1988*, ed. Stanley Chodorow, Monumenta iuris canonici, series C: Subsidia, vol. 9 (Città del Vaticano: Bibliotheca Apostolica Vaticana, 1992), 355–368; Gert Melville, "Zur Abgrenzung von Vita canonica und Vita monastica. Das Übertrittsproblem in kanonistischer Behandlung von Gratian bis Hostiensis," in *Secundum regulam vivere. Festschrift für P. Norbert Backmund O. Praem.*, ed. Gert Melville (Windberg: Poppe, 1978), 205–243.

⁶ Aemilius Friedberg, *Corpus Iuris Canonici*, vol. 2 (Leipzig: Tauchnitz, 1881): VI 3.24.2 (henceforth: Friedberg, *Corpus*).

The two supplications of the canon regular from Weissenau represent only a small sample of the source corpus of petitions from fugitive monks that I have examined.⁷ But as *pars pro toto* they can provide valuable insights into potentially influential factors of apostasy and its handling at the Roman curia and *in partibus*.

Earlier research into Penitentiary material has shown that one should always take into account the situation *in partibus* in order to understand the formalised entries in the papal registers.⁸ In other words: What a fugitive monk was pleading at the curia does not always have to reflect the complete context of his escape. Even if he was not directly lying he had possibilities to stretch the truth or to embellish the offence. If a petitioner supplicated to the Penitentiary, no investigation or verification of the *narratio* presented at the curia ensued since it was considered to be truthful. What exactly happened in the *partes* of Christendom remained concealed from the Roman authorities – the curia had, of course, no means to trace back every single case of the thousands and thousands of petitioners. The honest and genuine presentation of the actual events which eventually led to the petition (*mentio specialis*) were part and parcel of the whole administration system.⁹ The validity of a document depended on the condition of the *praescriptio mendaciorum* (legal clause of plea by deceit) and provided the *veritas precum*.¹⁰ A formal authentic letter of grace which complied with the *stilus curiae* became invalid if it was obtained under false pretences (*obrebitio*) or by suppressing substantial facts (*subrep-*

⁷ The investigation focuses on *apostasia a religione*, escape from monasteries, and its legal alternative, *transitus ad alium ordinem*, the transfer to an order of equivalent or stricter monastic rule. In the context of selected case studies I further investigate how the curial remains correspond with the local sources *in partibus*. Whilst work is still in progress, see Milena Svec, “Apostasie und Transitus in der Registerüberlieferung und in partibus,” in *The Roman Curia, the Apostolic Penitentiary and the Partes in the Later Middle Ages*, ed. Kirsi Salonen and Christian Krötzel, Acta Instituti Romani Finlandiae 28 (Roma: Institutum Romanum Finlandiae, 2003), 183–200 (henceforth: Svec, “Apostasie und Transitus”).

⁸ Svec, “Apostasie und Transitus,” 183–200. See also Kirsi Salonen’s article in this book.

⁹ See Othmar Hageneder, “Päpstliche Reskripttechnik. Kanonistische Lehre und kuriale Praxis,” in *Stagnation oder Fortbildung? Aspekte des allgemeinen Kirchenrechts im 14. und 15. Jahrhundert*, ed. Martin Bertram, Bibliothek der Deutschen Historischen Instituts in Rom 108 (Tübingen: Niemeyer, 2005), 192 (henceforth: Hageneder, “Reskripttechnik”).

¹⁰ It was modelled on the law of the late Roman emperor Zeno in the year 477 that rescripts issued from his chancery should only have legal validity if the circumstances of the case appeared to be true. Gratian later assumed it in his Decretum at C. 25 q. 2 dict. p. c. 16 (Friedberg, *Corpus I*): *Rescripta, siue sint adnotationes siue pragmatice sanctiones, expressam debent habere in se condicionem: Si preces ueritate nituntur*. See Brigitte Meduna, *Studien zum Formular der päpstlichen Justizbriefe von Alexander III. bis Innozenz III. (1159–1216): Die non obstantibus-Formel*, Österreichische Akademie der Wissenschaften. Philosophisch-Historische Klasse, Sitzungsberichte 536 (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1989), 40–49, and Othmar Hageneder, “Die Rechtskraft spätmittelalterlicher Papst- und Herrscherurkunden *ex certa scientia*, non obstantibus und propter importunitatem petentium,” in *Papsturkunde und europäisches Urkundenwesen: Studien zu ihrer formalen und rechtlichen Kohärenz vom 11. bis 15. Jahrhundert*, ed. Peter Herde und Hermann Jakobs (Cologne: Böhlau, 1999), 401–429.

tiō).¹¹ Whether a letter was wrongly obtained *ex malitia* or *ex ignorantia* made no difference.¹²

To avert obtaining graces by fraud, reassuring clauses were added such as *fiat si est ita* – if the narration was in accordance with the facts. The second supplication of Johannes Opser ends correspondingly with the restricting clause *signetur per fiat si est ita*. But if the pope himself or his authorities could not assess the truthfulness of a petitioner like Opser, who else was responsible for unveiling the facts and figuring out *si est ita*? Complicated cases, where it was only possible to grant grace with restricting clauses, were delegated to commissioners like the local bishop or other clerical authorities, abbots, etc. *in partibus*. They had to examine the facts *in situ*, to call, summon, and hear witnesses.

With the help of the two chosen supplications I will demonstrate in the following what sort of information can be gathered from them, what kind of statements were issued at the curia, and how challenging research *in partibus* turns out to be with lost sources and lucky findings.

WHAT ONE MAY LEARN FROM THE SUPPLICATIONS – OBVIOUSLY AND BETWEEN THE LINES

Why did Johannes Opser supplicate twice within a year for the same crime? Let us combine the two supplications to resolve this question and gather more information by taking the (unwritten) background into account.

*Supplication No. 1*¹³

The first, rather short, supplication of a *Johannes Opasser subdiaconus professus monasterii ordo Premonstratensium Augie Minoris Constantiensis diocesis* was registered on December 11, 1450. The narration tells briefly that he had left his monastery *sine licentia sui superioris*, that he took off his habit, apostatised, and roved. By the time of the registration, he was already reintegrated in his order (*nunc autem est reversus*), so that the escape must have taken place in an unknown period before. The supplication ended with the signature *fiat de speciali* of the *poenitentiarius maior* Domenico Capranica.

Johannes Opser was bound through profession to the upper Swabian Premonstratensian Abbey of Weissenau or Minderouwe, founded in 1145 by the Guelph min-

¹¹ See also Gero Dolezalek, "Suppliken," in *Handwörterbuch zur deutschen Rechtsgeschichte* 5 (1998), col. 94-97 and *idem*, "Subreptio," in *ibidem*, col. 68-69.

¹² X 1.3.20.

¹³ *RPG* II, 723. About the text, see Appendix.

isterial Gebizo, southwest of Ravensburg in the Schussen lowlands.¹⁴ The fact that Opser was not an ordained priest but served as a subdeacon is notable and will become important in the progress of this article.

*Supplication No. 2*¹⁵

Hardly a year after the first registration, another petition was registered for the same subdeacon Johannes Oppseer, Premonstratensian canon from Weissenau, dated October 20, 1451. In his petition – although he admitted some levity on his own part – he accused the devil of having cajoled him to illicitly leave the monastery for the secular world. In today’s view this might seem a lame excuse, but it was more than likely that Opser truly believed in a satanic seduction. A medieval person always had to be cautious not to indulge in the temptations of the devil or demonic powers which were felt as a real and omnipresent danger.¹⁶ Furthermore, according to canon law, devilish persuasion signified a reduction of criminal responsibility and the crime was considered not to have been committed in full consciousness.¹⁷ In the Penitentiary records this kind of reduced responsibility appears most frequently under the term *diabolo instigante*.

There were further aggravating and explicitly mentioned facts in the supplication that emphasized the seriousness of Opser’s offence: He had disposed of his habit and neglected his tonsure (*habitu et tonsura derelictis*). Part of the duties of the *professio religiosa* was the constant wearing of the habit.¹⁸ Outside the monastery walls he joined the mercenary troops of an unnamed secular master (*quendam dominum temporalem*) who was

¹⁴ The name Weissenau prevailed in the Late Middle Ages, in earlier times it was only named *monasterium sancti Petri in Augia* or only *Au* or *Onwe*. To discern it from the more famous Reichenau (primarily also short called *Augia* and later becoming *Augia maior*), the monastery Au near Ravensburg was called *Augia minor*. See Norbert Kruse, “Die Klosternamen,” in *850 Jahre Prämonstratenserabtei Weissenau 1145–1995*, ed. Helmut Binder (Sigmaringen: Thorbecke, 1995), 61, 65–66, and Arno Borst, “Hermann, Prämonstratenser in Weissenau,” in *Mönche am Bodensee (610–1525)*, ed. Arno Borst (Sigmaringen: Thorbecke, 1978; unabridged ed. Berlin: Ullstein, 1998), 281–282.

¹⁵ RPG II, 878. About the text, see the Appendix.

¹⁶ See Arnold Angenendt, *Geschichte der Religiosität im Mittelalter*, 2nd ed. (Darmstadt: Wissenschaftliche Buchgesellschaft, 2000), 151.

¹⁷ See Stephan Kuttner, *Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX. Systematisch auf Grund der handschriftlichen Quellen dargestellt*, Studi e Testi 64 (Città del Vaticano: Biblioteca Apostolica Vaticana, 1935), 85–86, and Kirsi Salonen, *The Penitentiary as a Well of Grace in the Later Middle Ages: The Example of the Province of Uppsala 1448–1527*, *Annales Academiae Scientiarum Fennicae* 313 (Saarijärvi: Academia Scientiarum Fennica, 2001), 132–133 (henceforth: Salonen, *Penitentiary*). Reduced responsibility for guilt was also conceded when having acted in hatred or anger, see Gratian, C.15. q.1. c.2. (Friedberg I).

¹⁸ See Johannes Baptist Sägmüller, *Lehrbuch des katholischen Kirchenrechts*, 2nd ed. (Freiburg im Breisgau: Herdersche Verlagshandlung, 1909), 833 (henceforth: Sägmüller, *Lehrbuch*) and Gregor Potthoff, “*Habitus non facit monachum, sed professio*: Die *susceptio habitus* und ihre Rechtsfolgen bis zum Konzil von Trient,” in *Studien und Mitteilungen aus dem Benediktinerorden* 108 (1997), 7–79.

hostile to the town of Ravensburg. He also took part in several felonious raids when he rode with the master and his paid mercenaries. We read of *homicidiisque, spoliis et rapinis etiam incendiis*. Yet Johannes asserts that he *neminem tamen manu propria interfecit*. Neither did he counsel, provide assistance for, or abet murder. Once, so he states, he found himself escorting his master in an unnamed hostile village or in the vicinity of a hostile grange (*in quadam villa inimicorum*). There he helped to set a certain house on fire with bunches of straw. But he adds that afterwards he himself assisted to extinguish the same fire. He stayed there until hostile mercenaries, obliged to the town of Ravensburg (*per inimicos dicti oppidi stipendiarios*), captured him and took him to Ravensburg. Having been captured and brought to Ravensburg, Johannes faced a quick and severe judgment. Ancient town chronicles tell sufficiently how free cities dealt with arsonists and thieves; all the more since arson was not accidental damage to property, but a deliberate threat to life or welfare. Substantial rewards were posted for arresting bandits and enemies of the towns,¹⁹ and when caught, the death penalty was a more likely punishment than imprisonment. Arson could be punished by beheading, breaking with the wheel, or death by fire – as known from Augsburg, where arsonists, heretics and sodomites were mostly burnt at the stake.²⁰ Obviously Johannes managed to establish that he was a canon of the monastery located about one Italian mile from the town. He was, therefore, subject to the *privilegium fori*, which granted clerics ecclesiastic jurisdiction for civil court matters and criminal cases; and, they could not be tried by a secular judge.

Hence, he was handed over to the abbot²¹ of Weissenau, an office which, at the time, was held by Johannes Fuchs of Markdorf (1423–1470).²² He seems to have been a strict abbot, both in his governing the monastery as well as in his own moral conduct, referred to as “*demüthiger Ascete*”, that is, a person wearing a belt of penance and sleeping on the floor.²³ Despite his severity, he was a competent and open-minded abbot who

¹⁹ See, as an example, “Die Chronik des Hector Mülch,” in *Die Chroniken der schwäbischen Städte: Augsburg*, vol. 3, *Die Chroniken der deutschen Städte vom 14. bis ins 16. Jahrhundert*, vol. 22 (Leipzig: Hirzel, 1892), 204 (henceforth: “Chronik Mülch”).

²⁰ Dieter Weber, *Geschichtsschreibung in Augsburg. Hektor Mülch und die reichsstädtische Chronistik des Spätmittelalters*, *Abhandlungen zur Geschichte der Stadt Augsburg*, Schriftenreihe des Stadtarchivs Augsburg 30 (Augsburg: Mühlberger, 1984), 222.

²¹ Even though the superiors of a religious house were normally called “priors” within the Premonstratensian order, they were “abbots” in Weissenau, from 1257 until the secularisation in 1802. In Swabia were much more Benedictine abbeys than Premonstratensian monasteries. The Swabian Premonstratensians imitated the title “*abbas*” and adopted the hierarchic system of the rule of St. Benedict. See Hermann Tüchle, “Mehr als 650 Jahre Prämonstratenserstift,” in *Weissenau in Geschichte und Gegenwart. Festschrift zur 700-Jahrfeier der Übergabe der Heilighutrelieque durch Rudolf von Habsburg an die Prämonstratenserabtei Weissenau*, ed. Peter Eitel (Sigmaringen: Thorbecke, 1983), 32 (henceforth: Tüchle, “Prämonstratenserstift”).

²² He is considered as the second founder of the monastery and his reputation was impeccable according to contemporary sources. See Tüchle, “Prämonstratenserstift,” 37.

²³ Brehm characterised him probably slightly biased as avaricious and a “knickerischer Haushälter”. See Carl Brehm, “Klosterzucht in Obermarchthal, Weissenau, Roth und Schussenried während des Mittelalters,”

kept the monastic economy afloat and sent canons from Weissenau to various universities.²⁴ He punished apostasy strictly by imprisonment. At about the same time when Johannes Opser had illicitly left his monastery, another canon, Simon Sattler, was sent by Abbot Fuchs to the monastery of Roggenburg on business affairs. Simon Sattler never reached his destination because he changed his itinerary without authorisation and decided to become a pilgrim to Rome. When he returned to his region in secular clothes, he was tracked down, captured and thrown in the dungeon on the orders of his abbot.²⁵

The connection between the monastery of Weissenau and the town of Ravensburg was a friendly one of confederation. The abbot and convent fellows were townsmen of Ravensburg and paid taxes. The monastery was protected by the town against all aggression except from ecclesiastical superiors or the bailiff and provided in return assistance, carriages and money.²⁶ The abbot was certainly not amused by the conduct of his fallible monk. On the one hand, Opser had refused obedience to his superior by leaving the monastery, neglecting the rules of the Order and by infringing upon the *stabilitas loci*. In addition, he had been involved in armed hostilities against an ally of the monastery. Johannes Opser, therefore, was punished and imprisoned in compliance with the statutes and customs of the order.

Released from the dungeon, he confirmed under oath that he had never done anything he was charged with, neither *per se vel alium directe vel indirecte verbo aut facto* and authenticated this oath with a handwritten letter. The subdeacon, being excommunicated and irregular *ex delicto*, had, of course, no other choice but to supplicate to the Holy See for absolution and dispensation, if he ever again wanted to receive a benefice, dignities, or higher consecrations.

It is of special interest to learn how his first supplication came to the curia: It was committed by a presbyter who, at the time, had sojourned near the monastery on his journey to Rome. It is very likely that he was one of the thousands of pilgrims headed for Rome in the holy year of 1450.²⁷ By the time the presbyter arrived in Rome the city must have been bustling with people. On December 19 a mass panic on the Bridge of Sant'Angelo reportedly ended in a disaster: According to sources about 200

Diözesan-Archiv von Schwaben. Organ für Geschichte, Altertumskunde, Kunst und Kultur der Diözese Rottenburg und der angrenzenden Gebiete 1902, 134 (henceforth: Brehm, "Klosterzucht").

²⁴ Tüchle, "Prämonstratenserstift," 37.

²⁵ Brehm, "Klosterzucht," 134-155.

²⁶ Tüchle, "Prämonstratenserstift," 38.

²⁷ See Ludwig Schmugge, "Deutsche Pilger in Italien," in *Kommunikation und Mobilität im Mittelalter. Begegnung zwischen dem Süden und der Mitte Europas (11.-14. Jahrhundert)* (Sigmaringen: Thorbecke, 1995), 105, and Schmugge, *Kirche*, 176-180.

people were squeezed to death or, as reported by an eyewitness, *drungen die leut ainander über die pruggen ab in das waßer und ertrunken*.²⁸

The cleric returned to Weissenau and indeed brought Johannes Opser a letter of grace from the Apostolic Penitentiary for his apostasy but, as it turned out, it was an absolution *in forma communi*. Moreover, the absolution was granted *per modum commissionis ad partes* and, therefore, the presbyter had to hand it over *cuidam abbati ordinis sui*.

One should have expected that Johannes Opser would be relieved by the papal letter of grace. But evidently he was not, and with legitimate reasons. The letter of grace brought back to Weissenau by the presbyter in all likelihood matched the above-mentioned first short registration entry.²⁹ As already told, the curia tried to thwart the acquisition of letters under false pretences or with latent deficiencies. *Littere in forma communi* were issued privileges, verifications or, as in this case, acts of grace – the validity of which depended on the correctness of the information given and were secured by restrictive clauses.³⁰ Johannes, who must have been versed in canon law or, at least, had acquired some fundamental knowledge in curial practice, knew that the *littera* was useless for him in such a form because it did not explicitly mention homicide, predation and robbery (*nulla super premissis, quod homicidiis, spoliis, rapinis, ut premittitur, interfuit facta mentione*). Thus, it would never pass the inquiry *in partibus*. A local investigator (*quidam abbas ordinis sui*) would have declared the letter null and void and obtained by fraud, because it only mentioned apostasy, disposing of the habit, and the return to the monastery, but concealed and suppressed the substantial circumstance of his various criminal deeds after his escape. Being involved in murder and robbery was grave and caused inability and irregularity (*inhabilitas* and *irregularitas*) which impeded him from being ordained or obtaining benefices.³¹ The first *littera* did not mention that he was irregular *ex defectu lenitatis*, which he actually was because he, as a cleric, had voluntarily become a mercenary and participated in warlike actions. The *littera* was therefore insufficient. His

²⁸ “Chronik des Burkhard Zink 1368–1468,” in *Die Chroniken der schwäbischen Städte: Augsburg*, vol. 2, *Die Chroniken der deutschen Städte vom 14. bis ins 16. Jahrhundert*, vol. 5 (Leipzig: Hirzel, 1866), 195–196. Burkhard Zink’s chronicles based on the accounts of the Augsburgian merchants Thoman Öhen and Bartleme Jenisch, who could save their lives by reaching an open shutter: [...] *die wurden also hart gedrunge und gedruckt, [...], daß sie andern leuten auff den köpfen giengen, biß man sie in ain haus durch ain laden einzucket [...], die waren in dem gedreng, die kamen mit solcher angst und not davon, es möchte ein berten stain erbarmen*.

²⁹ RPG II, 723. There is no obvious reason why the registration entry might not refer to the papal letter of grace even though the clause of a delegated inquisition *in partibus in forma commissoria* (as it says in RPG II, 878) is missing. Possibly the registrator did not record the whole text in the penitentiary registers – the short *narratio* underpins this argument. The first supplication granted by *fiat de speciali* – the *si est ita*, which is normally connected with *littere in forma communi* is likewise missing. However, according to Sägmüller, *Lehrbuch*, 87, these clauses are considered to be annexed even when they are not explicitly mentioned.

³⁰ Regarding the technique of papal rescripts see the instructive article of Hageneder, “Reskripttechnik,” 183.

³¹ See also Ludwig Schmutge, “Female Petitioners in the Papal Penitentiary,” *Gender & History* 12/3 (2000), 686.

irregularity could not be eliminated through mere absolution, he also needed a dispensation.

When Johannes prepared his second supplication, he was either more experienced or counseled by a competent proctor at the curia: The text demonstrates professional knowledge of supplication forms and legal subtleties. Thus, Johannes clearly dissociated himself from having killed someone deliberately and from having ordered, counseled, or assisted in a murder – which was important because not only intentional murder led to *irregularitas ex delicto homicidii*, but also incitement, aiding and abetting; the consequence of which might have been that Johannes would have become incapable of obtaining benefices or offices, administering in his *ordo* or becoming a priest. A central, daily task of the Premonstratensian monks of Weissenau was tending the souls of the incorporated parishes in the surroundings of the monastery.³² If subdeacon Johannes Opser wanted to preserve any possibility of being ordained to the priesthood or of obtaining any benefices, he had to prove his innocence by an acceptable papal letter containing the required absolution and dispensation.

Considering these insufficiencies, it is not difficult to understand that the former letter was of no value for Johannes Opser. However, the presbyter did not share Opser's opinion, because he wanted to be paid for his expenses and charged him the amount of 9 Rhenish florins. This waste of money must have put Johannes into a rage. He was highly displeased with the situation when he began to affront the cleric by menacing him verbally (*quod videns exponens et male contentus verba minatoria dicto presbytero intulit dicens*). He also tried to intimidate him with the threat that he would punish him instantly if he got hold of him (*si eum habere possit in manibus suis, vellet ipsum constringere ad hoc*) and would thus find compensation for the loss. Johannes Opser concluded that if the presbyter had not promised him the requested absolution and dispensation, he would have gone to the curia himself. Indeed, 9 florins was an exorbitant price, as it corresponded roughly to half of the annual income of a small benefice.³³ Probably the presbyter not only charged Opser the prepaid Penitentiary taxes but also additional expenses. After all, it was the holy year.

Agitated and excited rather than acting in bad faith, Johannes left his monastery a second time, took off his habit and neglected his tonsure, driven by the intention to find the cleric. Fleeing from the monastery he stole a horse, which he believed by mistake to belong to said presbyter. Later he sold the horse at much less than fair value, for

³² Georg Wieland, "Weissenau," in *Württembergisches Klosterbuch. Klöster, Stifte und Ordensgemeinschaften von den Anfängen bis in die Gegenwart*, ed. Wolfgang Zimmermann and Nicole Priesching (Ostfildern: Thorbecke 2003), 507-508.

³³ For comparison: In 1462, the Augsburg chronicler Burkhard Zink paid an annual amount of 7 Rhenish florins to a schoolmaster for the accommodation of his son; Ulf Dirlmeier, *Untersuchungen zu Einkommensverhältnissen und Lebenshaltungskosten in oberdeutschen Städten des Spätmittelalters. Mitte 14. bis Anfang 16. Jahrhundert*. (Heidelberg: Universitätsverlag C. Winter, 1978), 445.

only one Rhenish florin. He was convinced that the horse would have been worth 13 or 15 florins. The canon's grandmother redeemed the horse later for the same give-away-price of one florin and gave it back to its real owner. Even without any indication of his age, it can be concluded that Opser was still a young and rather hot-blooded man, also because he was still supported and relieved of difficulties by a grandmother. It was an important fact for the granting of absolution and dispensation that the stolen item had already been restored to its owner.³⁴

Having money in his purse, he joined a party of mercenaries with whom he had a good time for about a month in a certain town. He partook in self-indulgent revelries and carousals (*cum illos ad mensem vel circa in quodam oppido deguit commedendo, bibendo et de bono tempore sibi dando cum eisdem*), but forbore to join the mercenaries in predation, robberies, fire raising or other malicious activities, nor did he aid or abet them.

Suddenly, something must have changed his mind and he left his predatory consorts. Johannes Opser stated no reason. Maybe his misdeeds gnawed at his conscience and he regretted his temerity, or he missed the daily routine, the safety and sense of belonging he had in his monastery, or, last but not least, he simply ran out of money. Whatever his motivation, he went ruefully to the curia (*ad cor reversus*), suffering deeply and displeased with his offences (*de premissis male contentus et dolens ab intimis*) to hand in his second supplication. His list of transgressions had grown remarkably since the first supplication: To the already known misdeeds were now added once more apostasy, irregularity, theft of the horse, revelries, drinking bouts, and implicitly associated with them were unnecessary stopovers in taverns – each of which were forbidden amusements for clerics.³⁵

He supplicated the pope to absolve him from excommunication, which he had incurred *per constitutiones et statuta ordinis et monasterii predictorum aut alias a iure*, further from the accusation of perjury (because the first supplication did not fulfill the condition of the *veritas precum*), from apostasy, excesses, and sins. He also applied for a dispensation from the restrictions of irregularity and inability so that he could again serve in the already received minor orders and subdeaconate and for the ability to be promoted to the deaconate and priesthood (*quod in susceptis minoribus ac subdiaconatus ordinibus ac suscipiendis diaconatus et presbyteratus ordinibus, postquam illos suscepit, ministrare suscipiendosque recipere possit*).

He asked to be sent back to his monastery, which he had left and to which he was ready to return. If he should not have the chance to revert – in case his abbot refused to receive him – he asked to be sent to another monastery of the same order and observance or rule, where he wished to serve the Lord to the best of his ability.

³⁴ Salonen, *Penitentiary*, 87.

³⁵ See Sägmüller, *Lehrbuch*, 229.

He was without means and had to swear an oath of poverty so that the second *littera* could be granted for free (*et quod gratis pro Deo expediantur, quia pauper et nihil habens paratusque iurare concedere dignemini; gratis pro Deo*). Thereupon, the affair was delegated to the auditor, Berardus Erol of Narni, bishop of Spoleto, who had to investigate whether the grace could be granted or not. He attached the signature *fiat si est ita* as long as nobody had been killed (*si nec etiam aliqui occiderentur quoad irregularitatem*), and granted that Johannes could be allowed to pass to another monastery within a certain term and should be accepted with benevolence.

A LOOK AT THE BACKGROUND – THE SITUATION IN *PARTIBUS*

Only a few supplications on apostasy provide concrete facts about the escape and the time outside the monastery. In that respect the supplication of Johannes is exceptional compared to the normally rather short and formalised supplications. Because his case was complex and grave and since he felt obliged to tell all circumstances of his escape to fulfill the condition of the *veritas precum*, the *narratio* became more elaborate. The description of how he participated in raids is quite detailed, even the contemporary methods of arson are explained. The descriptions are lively and of quite a literary quality, which one would expect in novels and literature rather than in the registers of the papal court.

The lively images demonstrate how serious mistakes and misunderstandings could occur if a petitioner had a substitute who handed in the supplication. The case also shows why it happened that several supplications could be issued for the same sin of the same person.

As much insight as the two supplications provide, as much information remains veiled. What do we find out about Opser by putting together the available pieces of information? The surname Opasser or Opseer comes from Opser/Obser and is the professional name of the Middle High German word for “Obsthändler” or “Obstler” (meaning fruit merchant). The name is frequent in the archives of Ravensburg,³⁶ but it is likely that the family came from Buchhorn or Markdorf. Opsers were members of the council of Markdorf and to all appearances they were related to the great Ravensburg trading society (“Grosse Ravensburger Handelsgesellschaft”), but some Opsers also worked as “Gwandschnider” (tailors) and “Seckler” (producers of leather clothes).³⁷

³⁶ I would like to thank Andreas Schmauder, Staatsarchiv Ravensburg, for providing this information.

³⁷ See Aloys Schulte, *Geschichte der Grossen Ravensburger Handelsgesellschaft 1380–1530*, vol. III, *Deutsche Handelsakten des Mittelalters und der Neuzeit* (Wiesbaden: Steiner, 1964), 41, 383, 389, and Peter-Johannes Schuler, “Markdorfer Reichssteuerverzeichnisse von 1496/97 und 1542 – Älteste Einwohnerlisten der Stadt. Edition der Reichssteuerverzeichnisse des ‚Gemeinen Pfennigs‘ von 1496/97 und der Türkensteuer von 1542 in der Obervogtei Markdorf,” *Ulm und Oberschwaben* 51 (2000), 211.

In the fifteenth century, the upper Swabian Canon monastery of Weissenau was dominated by civic sons from Ravensburg and its surroundings.³⁸ Large parts of the history of Weissenau are still *terra incognita*; prosopographic studies are also still unpublished.³⁹ The name Johannes Opser does not appear in the necrology of Weissenau,⁴⁰ and the city archives of Ravensburg could not track down a person by that name. Furthermore, the first fragmentary council and judicial protocols only date back to the sixteenth century. It is also rather unlikely, after a first investigation, that any sources on Johannes Opser exist in the Hauptstaatsarchiv in Stuttgart. No evidence of a Johannes Opser can be traced in the registers of the finding aids related to the two collections of archive records of Weissenau.⁴¹

Another question mark is the leader of the mercenary troops. Johannes did not name him, but described him rather vaguely as *quendam dominum temporalem*. This does not alleviate reconstruction, since Ravensburg was involved in several martial feuds between nobility and free towns. In other words, a prospering town like Ravensburg had more than enough ‘noble’ enemies.

It is not possible to conclusively figure out with which mercenaries Johannes roved. The first thesis is that his misdeeds took place in the first half of the 1440s and that some years passed before Johannes sent the first supplication to the Penitentiary in the year 1450. One name stands out in the local sources of that time – Hans of Rechberg of Hohenrechberg – illustrious offspring of an old Swabian noble family, related to the Zollerns, Hohenstaufens, Montforts, Fürstenbergs and Waldfurts.⁴² He was a dazzling personality, of which historical tradition tells in admiration or contempt, depending on whether he is referred to as the most successful robber-knight in German history, *der tät den stetten groß laid*,⁴³ or is paid tribute as a warlord with clever and cunning tactics.⁴⁴

³⁸ Georg Wieland, “Gemeinschaft im Wandel,” in *850 Jahre Prämonstratenserabtei Weissenau 1145–1995*, ed. Helmut Binder (Sigmaringen: Thorbecke, 1995), 140 (henceforth: Wieland, “Gemeinschaft”).

³⁹ Wieland, “Gemeinschaft,” 119, speaks of a prosopographic data collection of the convent of Weissenau, which is already compiled but not published.

⁴⁰ *Necrologium Angiae Minoris*, Monumenta Germaniae Historica, Necr. Germ. I (Berlin, 1888), 153–165, and Franz Joseph Mone, “Nekrologium von Weißenau,” *Zeitschrift für Geschichte des Oberrheins* 8 (1857), 317–326.

⁴¹ Hauptstaatsarchiv Stuttgart, Weissenau, Prämonstratenser Kloster, B 523 and B 529. If any remains existed, the closest match would be B 523 with a range of documents concerning the monastery history before 1500, such as *De fundatore et fundatione Augiensis ecclesiae S. Petri Apostoli* (copies with explanations concerning ecclesiastical and imperial privileges for Weissenau until 1654), a so-called *Gedenkbuch* for abbot Jakob Murer, which basically includes notes related to the economic situation, starting from the middle of the 15th century, a *Journal des événements mémorables* from the 17th century as well as the *Libri Praelatorum* as source for the history of the monastery from its foundation until 1781. I would like to thank Bernhard Theil from the Hauptstaatsarchiv Stuttgart for his counselling.

⁴² Erhard Waldemar Kanter, *Hans von Rechberg von Hohenrechberg. Ein Zeit- und Lebensbild mit Stammtafeln und Wappensiegel nebst einem Anhang Regesten* (Zurich: Schulthess & Co., 1903), 1 (henceforth: Kanter, *Rechberg*).

⁴³ “Chronik Mülch,” 110.

He was able to change sides in an opportunistic manner: Former enemies became allies if he expected any personal benefit.⁴⁵ When he was murdered by a peasant, he was characterised as a berserker who caused war, murder, robbery and arson: *Er ist der grösste Wütrich gewesen, [...] er hatt allweg Krieg, er hat viel Schlösser verloren, hat unsäglich vil Menschen umgebracht und Mörderei gestift mit Städt einnehmen; er hat viel arme Leut gemacht mit Brennen und Rauben.*⁴⁶

Hans of Rechberg, usually with financial problems, had teamed up with a few other local knights and was feuding with the towns on Lake Constance like a buccaneer. With fast boats they boarded merchant vessels which were on the way to French, Swiss, or Italian destinations.⁴⁷ The prosperity of the townsmen attracted many impoverished knights to raids. Hans had a profound animosity towards the towns of Ravensburg and Wangen, but he also ambushed merchants of Ulm, Memmingen, Biberach, and Lindau.⁴⁸ Ravensburg, together with other upper Swabian merchant towns, complained already in 1441 about robber raids and ambushes and *ander unbillich mütwillig geschichten*.⁴⁹ This conflict resulted in a military campaign of the united troops of the town alliance ("Städtebund") against the castles of the robber-knights in 1441/42. The allied towns took rich prey and were thus compensated for earlier losses.⁵⁰ Although there was an armistice agreement between the "Städtebund" and the predacious enemies of the towns, the area around the Untersee (the lower part of Lake Constance, Hegau) re-

⁴⁴ He fought in the Old War of Zurich ("Alter Zürichkrieg") as an ally of Zurich; Alfons Dreher, *Geschichte der Reichsstadt Ravensburg und ihrer Landschaft von den Anfängen bis zur Mediatisierung 1802*, vol. 1 (Weissenhorn: Konrad, 1972), 296-298 (henceforth: Dreher, *Ravensburg I*).

⁴⁵ See Alois Niederstätter, *Der Alte Zürichkrieg. Studien zum österreichisch-eidgenössischen Konflikt sowie zur Politik König Friedrichs III. in den Jahren 1440 bis 1446* (Vienna, Cologne and Weimar: Böhlau, 1995), 209-210 (henceforth: Niederstätter, *Zürichkrieg*). When Rechberg realised in 1443 that forming an alliance with his former enemy Zurich could supplement his income and improve his living, he provided Zurich his assistance in the conflict with Schwyz.

⁴⁶ Kanter, *Rechberg*, 117.

⁴⁷ Johann Georg Eben, *Versuch einer Geschichte der Stadt Ravensburg von Anbeginn bis auf die heutigen Tage nach den bewährtesten ältern und neuern Geschichtsschreibern, dann nach Archival-Urkunden und Acten, und andern handschriftlichen Quellen*. 1. Heft (Ravensburg: Gradmann, 1830; reprint Ravensburg: Genth, 1987), 224 (henceforth: Eben, *Ravensburg*).

⁴⁸ Dreher, *Ravensburg I*, 296-297.

⁴⁹ Constance and the free German towns at Lake Constance sent a letter with three articles to Strassburg, in which they made known the decision from the "Konstanzer Städtetag" (Association of German Towns held in Constance) to unite the towns on July 10th, 1441. See *Deutsche Reichstagsakten unter Kaiser Friedrich III*, 2. Abteilung (1441-1442), ed. Hermann Herre and Ludwig Quidde, vol. 16 (Stuttgart: Gotha, 1928), 90, No. 46.

⁵⁰ Eben, *Ravensburg*, 224, and Harro Blezinger, *Der schwäbische Städtebund in den Jahren 1438-1445, mit einem Überblick über seine Entwicklung seit 1389*, Darstellungen aus der Württembergischen Geschichte 39 (Stuttgart: Kohlhammer, 1954), 82 (henceforth: Blezinger, *Städtebund*).

remained unstable and Rechberg continued to terrorise and ambush merchants and peasants.⁵¹

The infamous mercenaries after a while were nicknamed “Böcke” (bucks). They took no mercy on captives and massacred merchants, even if they had offered ransom.⁵² They were described as wild and brutal scoundrels who had already served a few masters, walked around with bare thighs, clad only with a short skirt or a jerkin, armed with hand rifles and crossbows.⁵³ If Johannes Opser joined soldiers like them, he had certainly seen enough violence. We know little of the feuds during the years of 1444–1449. Hans of Rechberg, at any rate, fought in the so-called “Old War of Zurich” (Alter Zürichkrieg 1436–1446),⁵⁴ so that the Upper Swabian towns were not bothered by him during these years. Nonetheless the town alliance (“Städtebund”) was on constant alert.⁵⁵ From 1451 to 1457, Rechberg rode against the free cities and continued to devastate, murder, and plunder.⁵⁶ Amidst this feud Johannes Opser went to the curia. It is possible that there were also armed hostilities before the actual outbreak of the crisis which would cover the time before Johannes had a reason to go to Rome. It is not traceable whether Opser spent several years as a vagabond before he was caught and incarcerated or if he let time pass by between his release from the dungeon and the letter to the curia. It is not implausible that he only realised the pragmatic consequence of his misdeeds after a while and that his petition was primarily motivated by the wish to be ordained. That Opser was involved in the Old War of Zurich is unlikely, because the southwestern German towns acted as negotiators and supported Zurich. They were also interested in a settlement because the trade routes of the Swabian towns were affected by the war.⁵⁷

Another possibility is that only a short time passed between the escape and the writing of the supplication, and that Johannes was involved in the martial conflict of the Second Town War (“Zweiter Städtekrieg”) in the years 1449/50.⁵⁸ In this case, he must

⁵¹ Blezinger, *Städtebund*, 98–99.

⁵² Joseph Würdinger, “Ritter Hans von Rechberg und der Bund um den See. Ein Beitrag zur Geschichte des grossen Städtekrieges,” *Schriften des Vereins für Geschichte des Bodensees und seiner Umgebung* 5 (1874), 167, note 1.

⁵³ Kanter, *Rechberg*, 73.

⁵⁴ Niederstätter, *Zürichkrieg*, 223; Karl Dändliker, *Geschichte der Stadt und des Kantons Zürich*, vol. 2: *Stadt und Landschaft als Gemeinwesen von 1400 bis 1712. Machtböbe und beginnender Niedergang des alten Zürich* (Zürich: Schulthess & Co., 1910), 94.

⁵⁵ Karl Heinrich Roth von Schreckenstein, *Geschichte der ehemaligen freien Reichsritterschaft in Schwaben, Franken und am Rheinstrome, nach Quellen bearbeitet*, vol. 2 (Tübingen: H. Laupp'sche Buchhandlung, 1871), 46–47 (henceforth: Schreckenstein, *Reichsritterschaft* 2). On the 22nd March, 1446, 31 Swabian and Franconian towns federated for the period of three years.

⁵⁶ Eben, *Ravensburg*, 225–226.

⁵⁷ Christian Sieber, “Die Zeit der Entscheidungen,” in *Geschichte des Kantons Zürich*, vol. 1 (Zürich: Werd 1995), 486 and Blezinger, *Städtebund*, 105.

⁵⁸ Schreckenstein, *Reichsritterschaft* 2, 42–52.

have handed in his supplication immediately after his capture. The Margrave of Brandenburg, Ulrich of Württemberg, and other noblemen took part in the Town War. But was one of them the mysterious *dominus temporalis* under whose command Opser became a robber and arsonist? Margrave Albrecht of Brandenburg ordered setting fire to the moat of Nuremberg. Eyewitnesses reported that the town was covered in thick smoke.⁵⁹ The martial encounters took mainly place around the towns of Esslingen, Nuremberg and Nördlingen, while Ravensburg is only mentioned as an ally. As long as no other puzzle pieces emerge, it is mere speculation to conclude when and with which troops Johannes Opser had associated. Nevertheless, it shows clearly in what martial times Opser lived. Therefore it is comprehensible that the young religious could have been attracted by a soldier's life and left his monastery.

Even if many questions currently remain unanswered, this case shows how the curial sources offer a wealth of valuable information on social and regional history. Due to the Penitentiary registers one receives valuable new insights on a class of population like that of Johannes Opser, whose fate would otherwise be lost in the darkness of the past.

⁵⁹ So reported by the knight Ludwig von Eyb, see Schreckenstein, *Reichsritterschaft* 2, 50.

APPENDIX

Johannes Opasser subdiac. prof. mon. o.Prem. Augie Minoris Constant. dioc. sine lic. sui superioris exivit mon. et apostatavit dimisso habitu, nunc autem est reversus: de absol. et de disp. (f.d.s. D.) Rome 11. decb. 1450.

[RPG II, 723 (ASV, Penitenzieria Ap., Reg. Matrim. et Div., vol. 3, fol. 188r)]

Johannes Oppseer subdiac. prof. mon. o.Prem. Augie Minoris Constant. dioc. exponit, quod ipse inimico humane nature suadente ex quadam animi sui levitate in d. subdiac. ord. constit. mon. ipsum illicentiatum exivit et ad seculum est reversus habitu et tonsura derelictis, et ad quendam dom. temporalem, qui op. Ravenspurgen. Cunstant. dioc. inimicus tunc fuit, se transtulit; et c. eodem ac suis stipendiariis sepius equitavit homicidiisque, spoliis et rapinis et etiam incendiis interfuit, neminem tamen manu propria interfecit neque ad interficiendum quemquam consilium, auxilium prestitit aut favorem, sed tantum ut servitor et stipendiarius dom. sui equitavit, una vice tantum excepta, c. se c. dom. suo in quadam villa inimicorum reperit, in qua ipse c. uno manipulo straminis accenso quandam domum c. al. incendit et de post ante suum abinde recessum ignem ipsum extinguere iuvit; et dum mansisset quadam die p. inimicas d. op. stipendiarios captus fuit et ad op. d. ductus, quia tamen se monach. d. mon. sui, quod prope op. ipsum ad unum miliare italicum vel circa situm est, esse affirmavit, abb. d. mon. presentatus fuit et p. eundem incarceratus disciplinam eiusdem mon. iuxta ord. predicti statuta et consuetudines passus est et punitus; deinde de carceribus relaxatus iuravit se nunquam nullo temp. p. se vel al. directe vel indirecte verbo aut facto et iuram. huiusmodi litt. authentica vallavit et demum desiderans super premissis absol. et disp. sibi necessarias a sed. ap. obtinere, cuidam presb. prope mon. suum moram trabente et ad R. cur. ire volente, ut huiusmodi absol. et disp. sibi impetraret, commisit, qui presb. similiter absol. in forma communi p. penit. super simili apostasia p. modum commissionis ad partes cuidam abb. ord. sui reportavit et illam sibi assignavit p. eandem, quod novem fl. renen., quos se pro illa exposuisse affirmavit, ab exponente ipso habere voluit nulla super premissis, quod homicidiis, spoliis, rapinis, ut premittitur, interfuit facta mentione, que commissio sibi omnino inutilis fuit; quod videns exponens et male contentus verba minatoria d. presb. intulit dicens, si eum habere possit in manibus suis, vellet ipsum constringere ad hoc, ut satisfaceret sibi pro negligentia pro eo commissa, quia si ipse sibi absol. et disp. necessarias obtinere non promississet, personaliter ad [R.] cur. se transtulisset et ita commoto animo peius malo accumulando, denuo mon. suum exivit animo et intentione d. presb. depredandi, iterum habitu et tonsura derelictis et quendam equum, quem d. presb. esse credidit, qui tamen suus non erat, depredavit illumque vendidit pro uno fl. renen., quamvis forte tredecim vel quindecim fl. valebat, et illum in usos suos convertit: quem tamen equum ava sua ab illo, qui cum pro uno fl. emerat, redemit pro uno fl. simili et equum ipsum ei cuius erat restituit; et demum cuidam societati stipendiariorum iterum se iunxit et c. illis ad mensem vel circa in quadam op. degit comedendo, bibendo et de bono temp. sibi dando c. eisdem, non tamen aliquibus spoliis, rapinis, incendiis aut al. actibus malis

interfuit nec ad similia perpetrandum consilium dedit aut favorem; et tandem ad cor reversus ad R. Urbem pro absol. et disp. sibi necessariis pervenerit, de premissis male contentus et dolens ab intimis; c. autem exponens de premissis ut prefertur summe doleat: supplicat, quatenus ipsum ab excom. sent., si quam ob premissa p. constit. et statuta ord. et mon. predictorum aut al. a iure quolibet incurrit, nec non a periurii reatu et apostasie ac excess. huiusmodi ac peccatis suis al. absolvi secumque super irreg. et inhabil., si quam d. modo contraxit, ac quod in susceptis min. ac subdiac. ord. ac suscipiendis diac. et presb. ord., postquam illos suscepit, ministrare possit et valeat dispensari sibi, ut ad al. mon. eiusdem ord. et observ., si ad d. mon. suum, ex quo exivit et ad quod redire paratus est, reintrare non possit, se transferre et inibi Deo, prout desiderat, famulari possit et valeat, lic. impartire mandare dignemini de gratia speciali (f.u.i. D., et quod gratis pro Deo expediantur, quia paup. et nihil habens paratusque iurare; videat eam dom. B. Spo.; signetur per f.d.s., si est ita et si nec etiam aliqui occiderentur quoad irreg., et quod transire possit ad certum mon., ubi benevolam receptionem inveniatur infra certum term., B. Spo.) Rome 20. oct. 1451.

[RPG II, 878 (ASV, Penitenzieria Ap., Reg. Matrim. et Div., vol. 3, fol. 752r-v)]

LOCAL NEEDS IN THREATENED LANDS



THE SURVIVAL OF THE CATHOLIC CHURCH IN ALBANIA
DURING THE PERIOD OF DIRECT CONTACT
WITH THE OTTOMANS (1458–1484)

Etleva Lala

The period between 1444 and 1468, in the Albanian historiography known as the epoch of Scanderbeg, was also the time of the Albanian wars against the Turks. Under the leadership of Gjergj Kastrioti Scanderbeg, the Albanians managed to resist the Ottoman attacks successfully for 24 years.

An important role in the resistance of the Albanian people was played by the Catholic clergy. The clerics played the role of spiritual leaders in the wars against the Ottomans, being thus a great assistance to Scanderbeg.¹ They also took part actively in battles, fighting against the Turks. After the death of Scanderbeg (January 17, 1468), the Albanians continued their war against the Turks, but never as successfully as under Scanderbeg's leadership.

In the years 1478/79, all Albania, except the cities of Durrës, Antivari and Ulcinj, fell into the hands of the Turks.² Towns were destroyed, people were killed or kidnapped. On September 2, 1479, three hundred men³ from the strong Catholic city of

¹ The Albanian Catholic Church also played a decisive role in the diplomatic, economic and political support of Scanderbeg. See Oliver Jens Schmitt, "Paul Angelus, Erzbischof von Durazzo und seine Bedeutung für den Türkenkampf Skanderbegs," *Bollettino dell'Istituto Ellenico di Studi Bizantini e Postbizantini* XXX (2000), 129; Bazilio Pandzic, "I francescani a servizio dell'Albania nell'epoca di Scanderbeg," in *V Congresso Internazionale di studi Albanesi* (Palermo: Centro internazionale di studi albanesi, 1969), 185. See also Anton Fishta, "Skanderbegu dhe Françeskajt" (Skanderbeg and the Franciscans), *Hylli i Dritës* 6 (1930), 366-376; Marin Sirdani, "Kontributi i elementit katolik shqiptar në larmë t'atdhetaris që prej kohëve të vjetra deri në kohën e turqve të ri" (The contribution of the Albanian Catholic element in the field of patriotism from ancient times to the period of the Turks), *Hylli i Dritës* 9 (1933), 328-351; Athanas Gegaj, *L'Albanie et l'invasion turque au XV^e siècle* (Paris: P. Geuthner, 1937).

² Akademia e Shkencave të Shqipërisë, *Historia e popullit Shqiptar* (History of the Albanian People), vol. 1 (Tirana, 1967), 471 (henceforth: *Historia e popullit Shqiptar*).

³ The number varies in different sources. The source of Fetnameja of Fatih, cited by Gazmend Shpuza, mentions five thousand men killed on this occasion. See Gazmend Shpuza, "Lufta për mbrojtjen e

Drivast were killed as a demonstration by the Turks, to set an example of revenge against the Catholic Albanians.⁴ The revenge of the Turks forced Albanians to migrate en masse towards the Italian cities on the western coast of the Adriatic Sea,⁵ and to the northwest (Dubrovnik and Dalmatian cities). As a result, whole villages and other inhabited centres are recorded to have been totally abandoned and left deserted.⁶

The local Catholic Church was considered one of the greatest enemies of the Turks, not only for religious reasons, but also because of its active participation in the wars. As a result, the Turks destroyed churches and monasteries, setting them on fire⁷ and plundering them. This situation had a strong impact on the status of Catholicism in the Albanian territories, and also on the quality of the activities in the existing Catholic institutions.

As a result of the constant influx of Turks into Albania, the Catholic dioceses on the periphery of the territory, which had always been strongly influenced by the Eastern rite, were the first to succumb.⁸ For instance, the bishopric of Aulona (Vlora) ceased in the year 1399,⁹ the bishopric of Cernice (Çermenikë) in the year 1451,¹⁰ and the bishopric of Kroja (Kruja) seems to have fallen under the authority of the Byzantine-Orthodox autocephaly of Ohrid after the first fall of the city (1415).¹¹

Shkodrës në vitet 1474 dhe 1478–1479” (The battles for the protection of Shkodra in the years 1474 and 1478–1479), in *Konferenca e Dytë e Studimeve Albanologjike*, vol. I (Tirana: Mihal Duri, 1969), 220.

⁴ Martin Barleti, *Rrethimi i Shkodrës (De Obsidione Scodrensi)*, transl. into Albanian by Henrik Lacaj (Tirana, 1967), 100; *Historia e popullit Shqiptar*, 291, 312; Franz Babinger, *Mehmet pushtuesi dhe koha e tij* [Mehmet der Eroberer und seine Zeit], transl. and republ. (Prishtina, 1989), 431; Viktor Novak and Milan von Šufflay, “*Statuta et ordinationes capituli ecclesiae cathedralis Drivastensis*,” in *Biblioteka arhiva za Arbanasku starinu, jezik i etnologiju, i historiska serija* 2:1 (Belgrade: Izd. Seminara za Arbanasku Filologiju, 1927), V.

⁵ Eqrem Çabej, “Ngulimet shqiptare në Itali dhe gjuha e tyre” (The Albanian Settlements in Italy and Their Language), in *Konferenca e Dytë e Studimeve Albanologjike*, vol. 3 (Tirana: Universiteti Shtetëror, Instituti i Historisë dhe i Gjuhësisë, 1969), 107–115.

⁶ Halil Inalçik, “Krahina e Krujës dhe e Dibrës rreth vitit 1467” (The Region of Kruja and Dibra around the year 1467), in *Konferenca e Dytë e Studimeve Albanologjike*, vol. 1 (Tirana: Universiteti Shtetëror, Instituti i Historisë dhe i Gjuhësisë, 1969), 189 (henceforth: Inalçik, “Krahina e Krujës”).

⁷ Augustin Theiner, *Vetera monumenta Slavorum Meridionalium Historiam Illustrantia. Maximam partem nondum edita ex tabulariis vaticanis depromta collecta ac serie chronologica disposita*, vol. I (Roma: Typis vaticanis, 1863), 425–426; Jovan Radonić, *Đuradž Kastriot Skenderbeg i Albanija u XIV veku*. (Georg Castrioti Scanderbeg and Albania in the fifteenth century), Srpska Kraljevska Akademija: Spomenik 95 = Drugi razred 74 (1942), knj. 146.

⁸ Milan von Šufflay, “Die Kirchenzustände im vortürkischen Albanien. Die orthodoxe Durchbruchzone im katolischen Damme,” in *Illyrisch-albanische Forschungen*, ed. Ludwig Thallóczy vol. 1 (Munich and Leipzig: Duncker and Humblot, 1916), 218 (henceforth: Šufflay, “Kirchenzustände”).

⁹ Šufflay, “Kirchenzustände,” 218.

¹⁰ *Ibidem*.

¹¹ *Ibidem*.

In general, most of the dioceses disappeared immediately after the areas actually fell into the hands of the Turks, such as the bishopric of Baleco in 1478.¹² Nevertheless, in the inner parts of the country, that is, in the territories which had been strongly under the influence of the Church, a Catholic lifestyle continued to exist even after the region's inclusion under the suzerainty of the Turks.¹³ After the fall of the city of Alessio (Lezha), which was occupied by the Turks in 1478,¹⁴ its bishop lived in the village of Kalmeti. The calamity of the town of Scutari (1479)¹⁵ was also followed by the calamity of its bishopric: It lost its vitality. In the year 1492, it is mentioned as only a *titularis ecclesia in partibus infidelium*.¹⁶ Catholic life in the cities of Durres, Antibari and Ulcinj, which did not fall under the suzerainty of the Turks at that time, was also influenced by Turkish proximity and by fear of destruction.

The dangerous situation of the Catholic Albanians changed drastically in the year 1486, when the papal curia, the Republic of Venice, and the Turks under Mehmet II fixed a pact according to which the Turks allowed the Catholics to exercise their religion in all the institutions willing to pay a fee and to recognise the authority of the vizir.¹⁷ Such a pact had already existed since 1455 for the Eastern Rite, that is, the Serbian and Greek Orthodox.¹⁸ This seems to have improved the conditions for the Catholics, although their institutions and also individuals were burdened with high taxes.

There is little evidence about the Catholic lifestyle in these territories immediately after their fall under Turkish rule. The source material existing for this period deals mainly with the organisation of the diocese, that is, bishops or archbishops, and does not reveal much about the problems created by the proximity of the Turks. In this context, the recorded material from the archives of the Apostolic Penitentiary¹⁹ sheds the best light on the lifestyle of the clergy and of the Catholics there, proving the attempts of the Church to survive. The Penitentiary texts show, among other matters, particularly the means and methods of the Albanian Catholic Church to recruit new clergy.

¹² Farlati, *Illyricum Sacrum*, vol. 7 (Venice, 1817, republ. under the supervision of Musa Ahmeti, Prishtinë: Arbi Ltd. 2004), 209 (henceforth: Farlati, *Illyricum Sacrum*, 7).

¹³ *Historia e popullit Shqiptar*, vol. 1, 484.

¹⁴ *Ibidem*, 471.

¹⁵ *Ibidem*. Lulëzim Lajçi, *Shkodra në Shekullin XV* (Shkodra in the fifteenth century) (Prishtina, 1997), 152.

¹⁶ Farlati, *Illyricum Sacrum* 7, 319.

¹⁷ The vizir was the Turkish administrator of the occupied region. For the pact, see Jovan Radonić. *Rimska Kurija i Južnoslovenske zemlje od XVI do XIX veka* (The Roman curia and the South Slavic countries from the 16th to the 19th century), Posebna Izdanja Knjiga 155, Odeljenje Društvenih nauka, Nova serija, vol. 3 (Belgrade: Srpska Akademija Nauka, 1950), 309 (henceforth: Radonić, *Rimska Kurija*).

¹⁸ Radonić. *Rimska Kurija*, 309.

¹⁹ For an introductory survey on the medieval Penitentiary, see Kirsi Salonen, *The Penitentiary as a Well of Grace in the Late Middle Ages. The Example of the Province of Uppsala 1448–1527*, Annales Academiae Scientiarum Fennicae 313 (Saarijärvi: Academia Scientiarum Fennica, 2001), 13–216.

The records of the Penitentiary may, however, also focus our attention mainly on failures and irregularities. Nevertheless, if one keeps the general situation created under the Turkish rule in mind – which can best be described as a devastation of the population and destruction of institutions – the irregularities brought to the attention of the papal curia show an interesting desire for improvement of the Albanian clergy and an attempt for the survival of the Church. Behind the irregularities presented, the continuing religious life in the area and the attempts of the Holy See to keep alive the Catholic Rite in the territories are visible.

The period of interest taken in this article, starts with the pontificate of Pius II (1458) and covers the following 26 years until the end of the pontificate of Sixtus IV (1484). As far as the Albanian territories are concerned, the registered cases of the Penitentiary have never been published before. They are being catalogued by a project on East Central Europe led by the Medieval Studies Department at Central European University in Budapest.²⁰ The almost 200 registered cases from Albania from this period are relatively numerous compared with the other Balkan countries.²¹ A reason for this was definitely the position of Albania as a stronghold of Catholicism in the Orthodox Balkans.²²

Most of the cases from the Albanian dioceses during the years 1458–1484 deal with criminality: The cases under the category of *de diversis formis* (52 petitions) and *de declaratoriis* (14 petitions) form together 34% of the total material. The matrimonial cases (*de matrimonialibus*) rank in second place with a total of 44 petitions or 23%. In the third place, we find the petitions of *de defectu natalium* with 41 petitions. The fourth category which has a considerable number of petitions is *de promotis et promovendis* with 31 cases.²³ The categories *de promotis et promovendis*, and *de defectu natalium* together make up 35% of the whole data.

Looking at the material as a whole, the majority of the petitions concerned clergy who had been victims of irregularities or had themselves conducted deeds against the regulations of canon law. The high number of such entries can be explained primarily on the basis of the interest of the Albanian clerics to keep or improve their position and to achieve ecclesiastical offices. The vacant places created after the desertion of clergy,

²⁰ See Piroska Nagy and Katalin Szende, “Conflicts, Control and Concessions. Report of the Pilot Project on the Archives of the Holy Apostolic Penitentiary. Hungarian Records in East Central European Context,” *Annual of Medieval Studies at CEU* 9 (2003), 333–339.

²¹ Piroska Nagy and Kirsi Salonen, “East Central Europe and the Penitentiary (1458–1484),” in *The Long Arm of Papal Authority. Late Medieval Christian Peripheries and Their Communication with the Holy See*, ed. Gerhard Jaritz, Torstein Jørgensen and Kirsi Salonen, 2nd ed. (Budapest: CEU Press, 2005), 113 (henceforth: Nagy and Salonen, “East Central Europe”).

²² Alain Ducellier, *L’Albanie entre Byzance et Venise, Ve–XVe s.* (London: Variorum 1987) (henceforth: Ducellier, *L’Albanie*), chapter 11: “Aux frontières de la Romanité et de l’Orthodoxie au Moyen Âge: le cas de l’Albanie.”

²³ See Nagy, Salonen, “East Central Europe,” 113.

especially of Italian or Dalmatian origin,²⁴ after the Ottoman conquest also seems to have opened new doors for the locals to jump over their impediments and achieve ecclesiastical offices. One indication of such a development is the high number of *de defectu natalium* cases from the Albanian territories in this period.²⁵ Asti Zuri de Latesio, presbyter of Cunavia, for example, was born out of the relation of a presbyter with an unmarried woman and had kept quiet about his status. As a result, he had been promoted *ad omnes ordines*. Nevertheless, at a certain point in his life he might have been denounced because of his illegitimacy and silence about it. Thus, in order to continue in his ecclesiastical office, he was obliged to ask for absolution, which he received.²⁶

The *de promotis et promovendis* cases offer interesting facts about the way Albanian clerics were ordained. A certain Nicolaus Glanas and also Jacobus Theosilgeri had wives when they were still very young. Because of their zeal to become priests, they asked for absolution from the marriages and their requests were granted.²⁷ There are many similar cases presented in the registers of the Penitentiary from this period.²⁸

Another important reason for the many supplications seems to have been the proximity to the Turks, who strongly confronted the Catholics with another religion. This situation made the latter more vigilant and protective of their own rite. The population, tired of the wars and in great need of spiritual leadership, was certainly not willing to tolerate weak spiritual leaders. As a result, accusations and declarations should have been more common in such periods than in times of freedom and, thus, also the petitions for dispensations and absolutions.

Violence against the clergy is one of the other categories of irregularities which most frequently come to light through the Penitentiary supplications. The majority of the petitioners were lay people who had committed violence against priests.²⁹ In most cases there are no details about the incidents or about the reasons for the violent behaviour. The petitioners made frequent use of the term *olim dyabolo instigante* while pleading guilty, still wanting to excuse themselves as being misled by the devil as a mitigating circumstance.

The cases of clergymen inflicting violence on other clerics are not missing either. Martinus Virioni, presbyter of the diocese of Kruja, wrote a petition in 1480 in which he asked to be absolved from excommunication into which he had automatically fallen by having exercised violence upon Lazarus Buselli, who was also a presbyter.³⁰ Unfortu-

²⁴ Ducellier, *L'Albanie*, chapter 11.

²⁵ For instance, ASV, *Penitenzzeria Ap., Reg. Matrim. et Div.*, vol. 12, fol. 146v, 151v, 154r, 157r-v, 160r; vol. 13, fol. 280r; vol. 14, fol. 256r; vol. 16, fol. 193v.

²⁶ ASV, *Penitenzzeria Ap., Reg. Matrim. et Div.*, vol. 12, fol. 157r.

²⁷ ASV, *Penitenzzeria Ap., Reg. Matrim. et Div.*, vol. 14, fol. 298r-v.

²⁸ For instance, ASV, *Penitenzzeria Ap., Reg. Matrim. et Div.*, vol. 16, fol. 231r, 236v, 238r-v.

²⁹ For instance, ASV, *Penitenzzeria Ap., Reg. Matrim. et Div.*, vol. 14, fol. 187v, 190v, 227r; vol. 16, fol. 95v.

³⁰ ASV, *Penitenzzeria Ap., Reg. Matrim. et Div.*, vol. 29, fol. 20r.

nately, the entry does not offer more information on the circumstances of the event. The supplication itself, dated January 7, 1480, originates from the diocese of Kruja, a diocese which in the historiography is considered to have ceased to exist after the fall of the city in 1415.³¹ The supplication, however, seems to give evidence of an uninterrupted Catholic life in this area. An interesting piece of information in this small entry is also the family name of the petitioner: Virioni is a family name which, in Albanian historiography, was unknown before the sixteenth century and was always connected with the Turks.³² Its appearance in the fifteenth century means that the family existed in Albania before the arrival of the Turks and that they were Catholics.

Registered entries about other matters, such as simony, are less frequent. One of them, however, needs to be mentioned. It shows that the problem of simony existed in the area, whether the actors were really ignorant about its perversity or not. Lucas Conte, presbyter from the city of Durres, brought such a case to the curia. He reports having made a contract with Nicola,³³ the bishop of Stefania,³⁴ to resign the canonicate and prebend of the collegial church of St. Andrea in the city of Durres in favour of the latter, and to receive for this favour a part of the income of this canonicate and prebend. The petitioner asked for absolution and the right to continue holding the canonicate and prebend of the church of St. Andrea, which was granted to him.³⁵ As a matter of fact, such entries are very rare, which means that either the problem of simony was not widespread, which does not seem very likely, or the low number of supplications of this kind is simply an indication that the practice was not regarded as severe enough for a supplication to the pope.

For some reason, the mentioned Lucas Conte must have been a privileged person. We encounter him also in another petition in which he presented a very common problem of the Albanian clergy. In this second petition he explained that he had been ordained to the priesthood already at the age of 22 years.³⁶ Such petitions related to young men willing to be ordained before having reached the age required by canon law were quite frequent in fifteenth-century Albania owing to the urgent need for priests at that time.³⁷ The lack of clergy after the Turkish devastation was understandable. Many

³¹ Šufflay, "Kirchenzustände," 218.

³² The name Vrioni in the 16th century meant an estate created through the benefices of the Turks to their officials in Albania. See *Historia e popullit shqiptar*, vol. I, 539.

³³ Nicolaus de Breta, *can. Dulmensis* was appointed bishop of Stephania on February 24, 1472. Bishop Lucas de Comitibus, who succeeded him, was appointed to office on May 4, 1494. Eubel, *Hierarchia Catholica* II, 266.

³⁴ Eubel mentions Joannes de Almodonaris o. Min. as last bishop of the diocese, who is mentioned in 1499 (Eubel, *Hierarchia Catholica* II, 266).

³⁵ ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 30, fol. 28r.

³⁶ ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 30, fol. 163v.

³⁷ A certain Theodor quondam Dominic Pasquo, deacon of Antibari, petitioned for the same reason; ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 30, fol. 167r. See also the case of Johannes Buci, another deacon

clerics had participated in fighting against the Turks³⁸ and had been killed during these wars. Others had withdrawn into more secure areas because their lives were unsafe in their dioceses. For instance, a large number of Albanian clerics of that time left for Dalmatia or Italy in order to exercise their offices there, especially in Dubrovnik, Venice, or Rimini.³⁹ As far as foreign clerics were concerned, few of them were willing to put their lives into jeopardy by coming to Albania, which was almost completely in the hands of the Ottomans.

The Turkish threat is also directly reflected in the petitions.⁴⁰ Paulus Jonima, deacon of Drivast, for instance, was enslaved by the Turks and taken to Constantinople, where he denied his Catholic faith. After having fled from there and returned to Albania, he started an ecclesiastical career as a presbyter, but because of his *macula* of having negated the Catholic faith, he asked for absolution. This was granted to him on March 11, 1482.⁴¹ Paulus Jonima was member of the noble family Jonima, which had often recruited bishops and provided support for the Catholic bishoprics, especially in the fifteenth and sixteenth centuries, when such an office was more a sacrifice than a privilege.⁴²

Generally speaking, the textual material from the Penitentiary shows to some extent the conditions under which the Catholic religion survived in Albania during the first years of the Turkish occupation and after the death of Gjergj Scanderbeg. The vacant ecclesiastical offices were taken by young clerics or by others who, according to the standards stipulated in canon law, suffered from a defect of birth (*defectus natalium*). The Holy See was supportive of these young men, who were willing to accept the sacrifice of putting their lives at risk for the Catholic cause. This was particularly true until

of Antibari; ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 31, fol. 243r. The archdeacon of Drivast, Dominicus Ungaro, had fallen into the same irregularity when he wrote the petition for absolution in the year 1478; ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 26, fol. 197r. A similar petition was also written by Belasius Henrici, presbyter of Antibari, in 1476; ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 24, fol. 243r. There are many other very similar Albanian cases in the entries of the penitentiary registers.

³⁸ Šufflay, "Kirchenzustände," 277.

³⁹ *Historia e popullit shqiptar*, vol. I, 478-479.

⁴⁰ Ana Marinković studied the cases concerning the Turkish menace and found out other interesting data concerning their threat. According to her, the violent type of Turkish case appears in 80% of the continental Central European supplications, while only 12% refer to illegal trade. The proportion of the violent and the trading cases in the Adriatic part of the region is exactly reversed. The majority of cases coming from the Adriatic cities, precisely 71%, concern selling forbidden goods (weapons, iron, or wood, but also a wide range of various articles not mentioned in canon law) to the Ottomans. Those cases mostly (8 times) originated from the dioceses subject to the metropolitan See of Antibari. Durres and Dubrovnik participated with 3 cases each, and there is one supplication from Korčula. I am grateful to Ana Marinković for giving me the opportunity to use these still-unpublished data.

⁴¹ ASV, *Penitenzieria Ap., Reg. Matrim. et Div.*, vol. 31, fol. 166v.

⁴² In the year 1474 we find Vitus Jonima; see Eubel, *Hierarchia Catholica* II, 96. In 1518, we come across members of this family in the diocese of Alessio (Lezha); see Šufflay, "Kirchenzustände," 249.

the year 1486. As mentioned above, the pact between the Holy See, the Republic of Venice, and the Ottoman Sultan in 1486 improved conditions for the Albanian Catholic religion. This development is also well documented by other sources such as the Ottoman population registration of 1519. Villages which were deserted in the year 1467 were well inhabited in 1519, with a good majority of Catholics in population.⁴³ This indicates an impressively strong resistance of the Catholic rite in these territories, thanks not the least to the Catholic clergy, out of whom many had found their ways into office with the help of Penitentiary dispensations.

⁴³ See Inalçik, "Krahina e Krujës," 189.

THE OFFICIAL PAPAL POLICY
TOWARDS BOHEMIA AND MORAVIA
IN THE 1460s AND ITS RELATION
TO THE PENITENTIARY OFFICE: THE CASE OF OLOMOUC

Antonín Kalous

This study will concentrate on one minute problem of the religious and political development of the Czech lands which is connected to the post-Hussite period of the reign of George of Poděbrady and the revolt against this king of Bohemia. The religious situation during the Hussite revolution in Bohemia has been described many times and even the relation towards the papacy and the relation of the papacy towards Bohemia are quite well known, even though there is no special study of the problem.¹ The Hussite period proper is usually described by historians as ending in 1436, when the *Compactata*, the agreement between the Council of Basle and the Hussites, was accepted by the estates in the Moravian city of Jihlava.² Nevertheless, the religious division within Czech society remained; especially in Bohemia and Moravia, the two most important Czech lands, it was continually present until the spread of the German Reformation. The Kingdom of Bohemia with the Margravate of Moravia was described as the country of the “two peoples”; the Catholics and the Utraquists. The *Compactata*, which secured the freedom of communion, became a part of state law and gave the legal basis for this dualism in Czech religious life, and thus also in social and political life.

The following period, when the kingdom did not have a king (since Ladislav Posthumus was too young to rule), was a period of *landfrýds* (Germ. *Landfriede*) and forced cooperation between the respective sides. This was necessary for keeping order in the country; the estates took over the government of the kingdom, supplemented by the lower nobility and royal towns. The king was represented by his regent only from

¹ See the latest works by František Šmahel, *Die Hussitische Revolution*, 3 vols., MGH Schriften 43 (Hannover: Hannsche Buchhandlung, 2002) (henceforth: Šmahel, *Die Hussitische Revolution*); idem, *Husitské Čechy: Struktury, procesy, ideje* (Hussite Bohemia: Structures, processes, ideas) (Prague: NLN, 2001); Petr Čornej, *Velké dějiny země Koruny české* (History of the Czech lands), vol. 5: 1402–1437 (Prague: Paseka, 2000).

² Cf. Šmahel, *Die Hussitische Revolution*, vol. 3, 1560–1573, 1673–1682.

the early 1450s. It was George of Poděbrady who took the lead, became the regent and, after the premature death of the young king, had himself elected as Czech king, after the model of his own prisoner, Matthias Corvinus, who was elected King in Hungary. The rule of estates and nobility, however, continued.³

It is clear that the agreement that was reached between the Hussites and the Council of Basle was never officially recognised by the pope. The Hussites believed that Eugene IV accepted the results of the negotiations in two of his bulls of 11 March 1436 and 18 September 1437, but “neither of these documents contained an express confirmation of the Council’s agreement with the Czechs.”⁴ The belief in this fact is even recorded by Pius II in his *Commentarii* in a speech of the Czech King George of Poděbrady: “... *Concilium nobis Basiliense – maioris auctoritatis, quam ipse est – et antecessor eius, Eugenius Compactata dederunt ...*.”⁵ The official declaration by Pius II in Rome on 31 March 1462 that the *Compactata* were invalid was repeated by Fantino de Valle at the Bohemian land diet in Prague in August 1462.⁶ This meant a new threat to the stability of the political system in Bohemia. After the *Compactata* had become part of state law, the balance of the “two peoples” had been created. Now it was finally rejected by Pope Pius II and the clash was inevitable, the civil war was gradually resumed and the situation became problematic again.⁷

The situation in the country was very difficult, since George of Poděbrady was officially elected and crowned king. Cardinal Carvajal, who then resided in Buda, congratulated him eighteen days after the election;⁸ King George was crowned by two Hungarian bishops instructed by Carvajal and originally Pope Calixtus III did not disagree. A congratulatory letter was written by the pope to the king; but it was never

³ About George: Frederick G. Heymann, *George of Bohemia: King of Heretics* (Princeton, NJ: Princeton University Press, 1965), Otakar Odložilík, *The Hussite King: Bohemia in European Affairs, 1440–1471* (New Brunswick, NJ: Rutgers University Press, 1965) (henceforth: Odložilík, *The Hussite King*); about the government and nobility cliques Jaroslav Boubín, *Česká „národní“ monarchie: K domácím zdrojům a evropskému kontextu království Jiřího z Poděbrad* (Czech “national” monarchy: A contribution to the domestic sources and European context of the reign of George of Poděbrady) (Prague: Historický ústav, 1992).

⁴ Odložilík, *The Hussite King*, 139.

⁵ Pius II, *Commentarii*, ed. Ibolya Bellus and Iván Boronkai (Budapest: Balassi, 1993), 439 (henceforth: Pius II, *Commentarii*).

⁶ For Rome see František Palacký (ed.), *Urkundliche Beiträge zur Geschichte Böhmens und seiner Nachbarländer im Zeitalter Georg’s von Podiebrad (1450–1471)*, *Fontes rerum Austriacarum* II, 20 (Wien, 1860), 269, no. 276 (pronouncement of Antonius de Eugubio, the papal procurator), cf. 270–271, no. 278 (henceforth: Palacký, *Urkundliche Beiträge*).

⁷ For the rejection: Pius II, *Commentarii*, 361–362. Concerning the description of the legacy by Václav Koranda, an Utraquist priest and a member of the embassy, Adolf Patera (ed.), *Poselství krále Jiřího do Říma k papeži roku 1462* (An embassy of King George to the Pope in Rome in 1462), *Archiv český* 8 (1888), 321–364; Latin text of Pius’ speech, 360–363.

⁸ Palacký, *Urkundliche Beiträge*, 140, no. 146; cf. Ludwig von Pastor, *Geschichte der Päpste*, vol. 1 (Freiburg im Breisgau: Herder, 1925), 753 (henceforth: Pastor, *Geschichte*).

sent due to the intervention of the count of Saxony.⁹ There was, though, a secret oath taken by George and his wife before the coronation that he would reject the Chalice and join the Roman Church again in the future.¹⁰ The open conflict with the papacy in 1462 created a problem for Catholics who lived in the Czech lands.

For the pope, the struggle against George of Poděbrady was, however, still not as crucial as the fight against the Ottomans, which was uppermost in the mind of Pius II, even though he was the one who abolished the *Compactata*.¹¹ His successor, the Venetian Pope Paul II, on the other hand, gave prominence to the conflict with the heretics in Central Europe, even though he was instrumental in peace among the Italian states in May, 1468, because of the Turkish threat.¹² He called for support against the heretical Czechs, and solemnly proclaimed King George a heretic in 1465. The pope also freed the subjects of the king from their oath of fealty. In this way the pope supported the revolt and resistance in Bohemia, which was formed by the Catholic nobility under the guidance of Zdeněk of Šternberk. There was, however, no clear division on the basis of denomination; many Catholics still took the side of King George and stayed faithful to him, at least in the initial phases of the civil war. And together with a handful Catholic priests¹³ there were some Catholic nobles and royal towns in both Bohemia and Moravia which stayed loyal. Since some of the nobles and all the royal towns were influential and wealthy; their loyalty was quite crucial for the king and their cooperation decisive for the Catholic side. Inevitably, they had to be torn between the two ideals – either stay faithful to the lawful king, or reject him and be faithful to the pope and the Roman Church, which was directly opposing the king. For this reason, some of the Catholic nobles as well as Catholic royal towns wanted to stay neutral, an option that was impossible under the circumstances.

⁹ ASV, *Arm.* XXXIX, vol. 7, fol. 171v-172v, a letter of Calixtus III to Cardinal Carvajal, 13 May 1458; cf. Vilmos Fraknói, *Carvajal János bibornok magyarországi követésége, 1448–1461* (The Hungarian legations of Cardinal Carvajal) (Budapest: Magyar tudományos akadémia, 1889), 50; Pastor, *Geschichte*, 756.

¹⁰ Prague, Národní knihovna, MS sign. I E 30, fol. 148r-v: *Iuramentum perfidissimi Georgii de Podiebrath*; cf. Odložilík, *The Hussite King*, 94. Matthias Corvinus had sent a copy (a notarial instrument) of George's oath to Pope Paul II in 1466, ASV, *A.A.*, *Arm.* I-XV/III, 639.

¹¹ Cf. Johannes Helmuth, "Pius II. und die Türken," in *Europa und die Türken in der Renaissance*, ed. Bodo Guthmüller and Wilhelm Kühlmann (Tübingen: Niemeyer, 2000), 79-137; Nancy Bisaha, "Pope Pius II and the Crusade," in *Crusading in the Fifteenth Century*, ed. Norman Housley (Basingstoke: Palgrave Macmillan, 2004), 39-52.

¹² ASV, *A.A.*, *Arm.* I-XV/III, 1443, fol. 45r-100v; cf. also Kenneth M. Setton, *The Papacy and the Levant (1204–1571)*, vol. 2: *The Fifteenth Century* (Philadelphia: The American Philosophical Society, 1978), 291-292.

¹³ E. g., Paul Židek, author of a few literary works; cf. also a priest seeking for absolution for assisting George's partisans, Ludwig Schmutge (ed.), *Repertorium Poenitentiarie Germanicum V: Verzeichnis der in den Supplikenregistern der Pönitentiarie Pauls II. vorkommenden Personen, Kirchen und Orte des Deutschen Reiches, 1464–1471* (Tübingen: Niemeyer, 2002) (henceforth: RPG V), 1492.

All of them were struck by the ecclesiastical censures. The nobles were affected by the interdict in their domains (all the Catholics who refused to fight suffered an interdict). An interesting discussion on this topic can be seen in the contemporary work by Jan of Rabštejn, who for a long time was a diplomat of George of Poděbrady. In his work, he described the effects of the “illicit” interdict, as it was called by one of the nobles. Just like other Catholic nobles loyal to the king, he was assaulted by his opponents and pressed by Zdeněk of Šternberk to give up his neutrality.¹⁴ Strict measures were implemented by the papal legates, among others Rudolf of Rüdesheim, who started to proceed against the helpers of George in August, 1465.

The royal towns were even more important for the Catholic side because they formed strongholds. Those with Catholic majorities were especially crucial, since there was a hope that they would join the Catholic side. In Bohemia, Plzeň (Germ. Pilsen) was under the threat of interdict, and after earlier attempts by Rudolf of Rüdesheim to persuade the townsmen, the city joined the Catholic side in September, 1466.¹⁵ An even more problematic situation arose in České Budějovice (Germ. Budweis) which, after unsuccessful attacks of Zdeněk of Šternberk, was persuaded in August, 1468, and again by means of the interdict.¹⁶ In December, 1467, at diet of the Catholic side in Wrocław (Germ. Breslau) in Silesia, the town’s representatives tried to stand for the politics of neutrality. The papal legate Rudolf, however, admonished them in strong words and, as Peter Eschenloer reported, the legate replied to their explanations: “If you can find the middle way between God and devil, it would be good that you stay in the middle between the lords and the heretics, but that is not possible. You either have to stay by the devil or by God.”¹⁷

Thus, the ecclesiastical censures, especially the interdict, seemed in the eyes of the prelates a legitimate means of compelling undecided Catholics to move to the side of the Roman Church. The interdict, which was designed to affect the whole community rather than individuals, and thus even the innocent, has been described as losing its

¹⁴ Jan z Rabštejna, *Dialogus*, ed. Bohumil Ryba (Prague: Orbis, 1946), 42–44, after the question of Zdeněk of Šternberk, where an illicit interdict happened, another nobleman says: *Omnibus in locis, ubi dominus loci catholicus nullam partem adiuvando pace frui voluerit*; cf. also 60, *Dimittite ergo neutralitatem illam et nobiscum pro fidei confirmatione vos unire, quemadmodum mandatum apostolicum est, non desistatis*.

¹⁵ Eva Burkoňová, “Vztah královské politiky Jiřího z Poděbrad k Českým Budějovicím a Plzni” (The relation of George of Poděbrady’s royal policy to České Budějovice and Plzeň), *Folia Historica Bohemica* 12 (1988), 365.

¹⁶ František Beneš, “Postoj českých Budějovic ke králi Jiřímu z Poděbrad v letech 1465–1471” (The attitude of České Budějovice to King George of Poděbrady in 1465–1471), *Jihočeský sborník historický* 37 (1968), 60–65.

¹⁷ Peter Eschenloer, *Geschichte der Stadt Breslau*, ed. Gunhild Roth (Münster, New York, Munich, and Berlin: Waxmann, 2003), 690–691: *Doruff der legat sagte, künden sie czwischen got vnd dem tenfil ein mittil finden, so were wol, das sie in mittil der herren vnd des keczirs rweien, adir das möchte nicht gesein, sunder müsten bey dem tenfil adir bey got bleiben*.

power in the later Middle Ages.¹⁸ It has been, however, successfully shown many times that the interdict even in the fourteenth and fifteenth centuries was still effective, not only in the Italian city states, most importantly Florence or Venice, but also in the areas beyond the Alps.¹⁹ The inhabitants were not only denied the sacraments, but as a general rule, their Orthodox neighbours felt free to assault them and make use of their falling into papal disgrace for their own benefit. Bohemia is a striking example of this.

The complicated situation of dual loyalty emerged not only in Bohemia, but also in Moravia. The four largest cities: Olomouc, Brno, Znojmo, and Jihlava (Germ. Olmütz, Brünn, Znaim, and Iglau) were inhabited predominantly by Catholics and, thus, they had to face the same challenge as the two mentioned cities in Bohemia. For a long time the royal towns stood on the side of the Czech king and refrained from supporting the Catholic revolt, even though they were Catholics themselves. The burghers of these cities were urged, just like the bishop of Olomouc, by the papal legate and even by the pope himself to join the rebellion and revolt against their “heretical” king. It is highly probable that the interdict was also used as a coercive instrument in this case; the cities remained loyal to the king till the end of 1466 or early 1467, when they joined the opposition. The pope gave the Olomouc burghers authority over the nearby Premonstratensian monastery of Hradisko in March, 1467, since the abbot of the monastery was a strong supporter of King George.²⁰ A short time after that, all four cities made a common treaty in June, 1467, *wider alle unsere feinde*, directed against King George.²¹ Even though there is no official document or papal bull inducing the interdict, we can be almost sure that there an interdict was proclaimed, or at least a threat of it. There are sources that describe directly the danger and risks for the common people, for instance, instructions for an envoy of Olomouc to King George in which the delegate was ordered to report to the king about the charters they were getting from the pope maligning the king.²² He was also to inform the king that they wanted to write to Rome and

¹⁸ Arthur Charles Howland, “The Origin of the Local Interdict,” *Annual report of the American Historical Association* 1 (1899), 432.

¹⁹ Richard C. Trexler, *The Spiritual Power: Republican Florence under Interdict* (Leiden: Brill, 1974); Frederic C. Lane, *Venice: A Maritime Republic* (Baltimore: The Johns Hopkins University Press, 1973), 64–65, 237; William Kurtz Gotwald, *Ecclesiastical Censure at the End of the Fifteenth Century* (Baltimore: The Johns Hopkins Press, 1927).

²⁰ Olomouc, Státní okresní archiv, fond: Archiv města Olomouce (henceforth: AMO), Sbírká listin, inv. no. 256, 17 March 1467 (the date in the bull is 1466; it is, however, published in the “third year of Paul II’s pontificate,” i. e., 1467, according to *calculus Florentinus*). Cf. the bull of Paul II to the abbot of Hradisko, inv. no. 255, 14 March 1467 (the same style dating); and a charter of the papal legate Rudolf, inv. no. 264, 26 April 1467, Wrocław.

²¹ Palacký, ed., *Urkundliche Beiträge*, 463–464, no. 398 (from Olomouc archives; similar charters were also preserved in the archives of the other towns); 420, no. 369 is erroneous.

²² E. g. AMO, Sbírká listin, inv. no. 258, 26 May 1466, Rome; in this bull Paul II calls King George *incliti Regni Bohemie occupator or hereticus*; the burghers should not aid him, especially against the city of Plzeň.

ask the pope to leave them in peace. The last point contains, however, an explicit reference to the interdict, the threat of which is still present: The citizens are afraid of losing the sacraments, especially baptism, extreme unction, and Christian burial.²³

Among the records of the Apostolic Penitentiary some cases related to the interdict can be found – especially on priests saying masses during the interdict or in front of excommunicated persons. One case of celebrating mass in front of excommunicates is documented from the Olomouc diocese in March 1467, but it is surely not related to the interdict,²⁴ but I will refer to another such case. In Olomouc, in 1465, a new hospital *pro pauperibus peregrinis* was established, of which the first charter of endowment was issued on 16 October 1465, and another one on 17 November 1466. It was founded by the noblewoman Anna Moše of Řetče. She endowed the hospital, which was to be created in her house close to the Dominican friary of St Michael, with a yearly subsidy of eight pounds (*hřivny*) of silver (one pound then roughly equalled 20.5 Hungarian florins).²⁵ She entrusted this sum to the mayor and the city council, who were supposed to make sure that the hospital would operate according to her wishes. In addition she donated the house for it.²⁶ The hospital was also endowed with a portable altar, since the chapel was not yet built. Anna's request was registered under the *De diversis formis* cases by the Penitentiary office and the permission granted on 19 July 1466.²⁷

As stated above, we have no exact date when the Olomouc burghers left the king and joined the anti-Georgian coalition, but it must have been some time in early 1467, for the bishop left the king only at this time and the four Moravian cities probably acted accordingly. Consequently, it can be stated that the request of Anna fell within the period of papal disgrace or interdict of the city.

²³ AMO, Zlomky registratur, inv. no. 4405.

²⁴ RPG V, 1344 (*de diversis formis*); about problems with the interdict cf. Ludwig Schmugge, Patrick Hersperger and Béatrice Wiggerhauser, *Die Supplikenregister der päpstlichen Pönitentiarie aus der Zeit Pius' II. (1458–1464)*, Bibliothek des Deutschen Historischen Instituts in Rom 84 (Tübingen: Niemeyer, 1996), 125–132.

²⁵ One pound of silver was sixty-four grossi, and twenty-five grossi equaled one Hungarian florin in 1469; cf. Josef Smolík, *Pražské groše a jejich díly (1300–1547)* (Prague grossi and their parts) (Praha: Česká akademie císaře Františka Josefa pro vědy, slovesnost a umění, 1894), 35.

²⁶ AMO, inv. no. 251, 16 October 1465, s.l.; inv. no. 261, 17 November 1466, Olomouc.

²⁷ RPG V, 1240. *Anna Musze de Rzece nobilis mulier Olomuc. dioc. cupiens temporalia in spiritualia et transitoria in eterna commutare de bonis a Deo sibi collatis quoddam hospitale in civitate Olomuc. pro pauperibus peregrinis inibi recipiendis cum quadam rotabili capella pro missis et aliis divinis officiis celebrandis constitui et edificari fecit cupiatque, ut in eadem capella quilibet presbiter secularis vel regularis missas et alia divina celebrare possit; sed quia nondum est consecrata petit, ut presbiter cum altari portatili et aliis ad hoc necessariis in dicta capella missas et alia divina sine alieni iuris preiudicio celebrare valeat ordinarii loci licentia super hoc minime requisita: de lic. (f.d.s. sine preiudicio A. Legionen.) Rome apud s. Marcum 19. iul. 1466.* Lucie Doležalová drew my attention to this case; cf. her article, “‘But if you marry me?’ Reflections of the Hussite Movement in the Penitentiary (1438–1483),” in *The Long Arm of Papal Authority: Late Medieval Christian Peripheries and Their Communication with the Holy See*, ed. Gerhard Jaritz, Torstein Jørgensen, Kirsi Salonen, 2nd ed. (Budapest: CEU-Press, 2005), 121–134.

The entry in the Penitentiary registers creates some problems that are difficult to solve: Was the portable altar confirmed during the period of papal disgrace? Or was the city council inclined to change sides long before the bishop? And was this something that the clerks in the Penitentiary office would know? It seems to be good reason to re-date the changing sides of Olomouc and other Moravian towns, but this is, in our opinion, not very likely. A more plausible solution is that this case is an example of inconsistencies in the system of papal offices. Even if the official papal policy disapproved of the city policy of Olomouc, it may be that the decision of the Penitentiary office in favour of the town was not affected by the developments of the “high” politics. The official policy of the fight against the heretic Hussites was elevated by Pope Paul II above the struggle against the Ottoman Turks, whereas the *modus operandi* of the Penitentiary office remained the same. The reason for this inconsistency in papal communication may be explained by the practice of the Penitentiary office. Many of the actions of the office can be explained as a matter of procedure, not dependent on other elements. In this case, it could just have happened that the politics of the Papal See was not coordinated with the Penitentiary, which had different objectives. Thus, it might be that the Penitentiary concession of a portable altar was given to a place under interdict or under the threat of it.

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The volume contains selected papers from an international workshop in 2005, at the Hungarian Academy in Rome. They aim at investigating the registers of fifteenth-century supplications to the Apostolic Penitentiary of the Holy See and analyse the multiplicity of issues in which a context of the local needs of Western Christians and the central power of the pope had been occurring.

The contributions make clear that local and individual factors and practice of Christian faith and religion must not be seen as separated from the global power of the Roman curia. The latter's influence could become directly important for any individual in any local space, also ... *et usque ad ultimum terrae* (Acts 1:8), on the utmost peripheries of the Christian world. The assistance by the Apostolic Penitentiary was indispensable in a large variety of cases. The occupation with such cases happened in the local and regional space as well as in the globalised centre of the Holy See.

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